1942 **K** **File No.** O Def of Ind 42 pH

SW. 11/7

Legal Deptt
A **BRANCH**

Subject:— Opinions under the Defence of India Act 1939

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S.I./9/5/56. 50.

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S.I./9/5/56. 5o.

Submitted.

The question for the consideration of the R.L.A. is whether of the daily news paper "Commercial News" of Ahmedabad can be said to have violated para 5(1) of the Newspaper Control Order, 1942, by fixing and receiving annual subscription at the rate of Rs.10/- in Ahmedabad and Rs.12/- outside Ahmedabad. The D.M.Ahmedabad reports that the paper is of a size that warrants the charge of one anna according to the Newspaper Control Order. It is also sold at one anna per copy.

2. Under para 5(1) of the Newspaper Control Order, 1942, the total number of pages in all the issues of a daily News paper published during a week shall not exceed the quota assigned in Schedule I to a newspaper of that class and price. For a newspaper sold at not less than one but less than 1½ annas per copy the quota of pages for one week is 28 if it is of class 'A' (vide Shedule I). This means in other words that in the the case of daily newspaper of class 'A' with a quota of 28 pages, the publisher must charge between one and one and half annas per copy. In this case by charging annual subscription at the rate of Rs.10/- or Rs.12/- the subscribers are able to get their copies for about half an anna each. The question how the price is paid whether per copy per day or annually in advance seems to be immaterial. As the result is that the newspaper which could not be sold for less than one anna per copy is available at the rate of half an anna the publisher seems to have committed

a breach of the order. A - Since the D.E. reports that the prosecution has already been launched against the publishers of "Commercial News" its results may be awaited before the R.L.A. is asked to express opinion

ID/ D.W.D.
25/7

A.S.

Reply may be as at A-A.

Id/-R.T.K.
25/7

ALR.

As slightly amended

Id/-R.S.H.
25/7

R.L.A.

Id/-P.N.Moon
25/7

4C.

Office of the R.L.A.

The questions for the R.L.A's consideration are:-

(1) Whether under section 19 of the Defence of India Act a Collector can apportion the amount of compensation where the apportionmen is disputed by the claimants.

(2) Whether in the case of such a dispute the Collector can retain the amount of compensation in deposit and refer the parties to the Civil Court.

It does not appear that under section 19 of the Act either th Collector or the Arbitrator can determine the apportionment if it i disputed by the claimants. Amount of compensation can hardly be taken to mean amount of compensation payable to each particular claimant. The view taken by the Secretary, Revenue Department that section 19 of the Defence of India Act specifically refers to the fixing of the amount of compensation if there are any disputes as regards the apportionment of compensation among the persons concern does not appear to be correct. There is no such reference in the section. The duty of both the Collector and the Arbitrator under section 19 seems to be confined to fixing the total amount of compensation. Provided the claimants agree to the apportionment, ther would be no objection to the Collector or arbitrator apportioning i But if there be a dispute, then neither can decide it. In such a case there seems no legal objection to the Collector retaining the amount in deposit and referring the parties to the Civil Court, although in the Defence of India Act there is no section corresponding to section 30 of the Land Acquisition Act. It may be noted that section 30 of that Act enables the Collector to refer the dispute to the Civil Court. Under the Defence of India Act the Collector could only advise the parties to go to the Civil Court and it would be their individual choice whether to go or not. That situation may lead to difficulties and it may be necessary later to consider whether the Act should be amended to authorise the Collector to refer the dispute or permit the Collector or Arbitrator to decide the apportionment.

Sd/- P.N.Moos
12/8
Remembrancer of Legal Affairs.

U.R. to R.D., No.6562, dated the 13th August 1942.

4C.

Submitted.

It appears that the Bombay Port Trust has entered into a contract with Messrs.Donalds Transpor Co. for the supply of bricks to the Senior Asstt. Engineer, General Works, Northern Division, at Kala-Chowky. Under para.9 read with the Schedule to the Brick (Control of Distribution) Order 1942, bricks of the kind specified in the Schedule shall not be sold in any area to which the Order applies at a price higher than the maxima price specified therein The Solicitors of the B.P.T. in their opinion (copy at p.3 ante) have stated that the said Order does not apply to bricks to be supplied to the B.P.T. under the contract as according to them the Brick (Control of Distribution) Order applies only to bricks described in the Schedule. The R.L.A. is requested to advise on two questions:

1). Whether the view expressed by the Solicitors of the B.P.T. is correct; and

2). If it is, whether the difficulty could be got over by notifying that the price of bricks an the price of transport shall always be separately declared.

2. The view expressed by the Solicitors of the B.P.T. that the Brick (Control of Distribution) Order does not apply to bricks to be supplied to the B.P.T. does not appear to be correct. It is true that the schedule to the Order mentions only four kinds of bricks. viz:

1. Hand-made bricks delivered at the Kiln site at which they are produced.

2. Machine-made bricks delivered at the Kiln site at which they are produced.

3. Machine-made bricks delivered f.o.r. at the rail way station nearest to the site at which they are produced.

4). Machine-made bricks delivered at the quay side or any of the Bunders or exwaggons at any of the Railway Station in the city of Bombay.

but the Schedule relates to para 9 of the order under which bricks of the kind specified in the Schedule shall not be sold at a price higher than the maximum price specified therein. Thus the order fixes the maximum price of the kinds or bricks specified in the Schedule. The statement made by the Solicitors in para.2 that the bricks controlled by the Order fall into four categories only is not correct. Para 9 read with the schedule only prescribes the maximum prices in respect or certain kinds of bricks. This does not however mean that the other provisions of the order such as "Acquisition" and "Disposal" (Paras.4 and 5) would not be applicable in the case of the bricks contracted for. Consequently though the prices in respect of the bricks contracted for would not be governed by the Brick (Control of Distribution) Order, the supply would be subject to the other provisions thereof. The view taken by the solicitors of the B.P.T. not being correct, the second question does not arise.

In/- D.W.D.
3/8/42

A.S.

In exercise of the powers conferred by sub-rule (2) of rule 81 of the Defence or India Rules and in supersession of Government orders issued unmer Govt. Notifications in the Home Department SD (A.R.P.) Nos.1854, 1856, 3454 and Nos.388B a... 53/2 dated the 20th February 1942, 20th February 1942, 24th March, 1942, 23rd May 1942 and 16th June 1942 respectively Govt. has made the Brick (Control of distribution) order No.378 I (H.D. Political - A.R.P.) dated the 27th July 1942. It a appears that the Bombay Port Trust has entered into a contract with Messrs. Donald Transport Co., for the supply of bricks to the Senior Asstt. (Contd)

Senior Asst. Engineer, General Works Northern Division at Kalachowky. The Solrs. or the B.P.T. in their opinion (at P.3 ante) have stated that the Brick Control Order No.53/2 dated 16th June 1942 does not apply to bricks to be supplied to the B.P.T. under the contract as the order applies only to bricks described in the Schedule. H.D.(Poll) A.R.P. thinks that though the order referred to by the Solicitors has been superseded, still the position regarding the delivery of bricks is not altered except for a few changes in the prices for the monsoon time. The questions raised for the consideration of the R.L.A. are:-

1). Whether the view expressed by the Solicitors of the B.P.T. is correct; if so

2). Whether the difficulty could be got over by notifying that the price of bricks and price of transport shall always be declared.

The Brick Order No.53/2 dated 16th June 1942 provided:

(a) "The bricks of the kind specified in column I of the table appended hereto shall not be sold at any place in the city of Bombay, the Bombay Suburban District and the Kalyan and Bhiwandi Talukas and Thana Mahal of the Thana Dist, at a price higher than the maximum price specified in the corresponding entry in the second column of the said table;

(b).....

(c).....

Table.

Kind of bricks.	Maximum price per 1,000 bricks.
1). Hand-made bricks delivered at the kiln site at which they are produced.	Rs.18 (including) loading charges).
2). Machine-made bricks delivered at the kiln site at which they are produced	Rs.20/- (including loading charges).
3). Machine-made bricks delivered f.o.r. at the railway station nearest to the site at which they are produced.	Rs.21/-
4). Machine-made bricks at the quay side or any of the Bandars in the city of Bombay.	Rs.26/-

Although the variation in maximum prices fixed unde the order was to account for the transport charges, still clause (a) of the order appears to control the sale of the kind of bricks specified in the table i.e. (1) hand-made bricks delivered at the Kiln and (2) machine made bricks delivered at the Kiln, (3) at the railway station and (4) at the quay side of any or the bandars. Consquently it would be possible to argue that the bricks of the description not falling under classes 1 to (4) would not be bricks of the kind controlled, by the order No.53/2 dated 16.6.42. The view taken by the Solrs. or the B.P.T. does not appear to be without (any) substance.

The provisions corresponding to the order No.53/2 dated 16th June 1942 are clause 9 or the Brick (Control of Distribution) Order, 1942 dated 27th July 1942 and the Schedule there to.

S.I.
4.5.56

It is likely that a similar construction will be placed on these provisions also. To dispel all doubt it appears necessary to notify the price of bricks and the cost of transport separately.

Id/- R.K.T. 4/8

A.L.R.

Before giving an opinion it would be better to see the contract.

Id/- R.S.H. 5/8

Please ascertain informally from H.D., A.R.P. whether it is possible to get the agreement.

Id/- R.T.K. 5/8

Subd.

Resubmitted with ref. to A.L.R's above note. The H.D. States that there is no written agreement as such. The orders placed by the B.P.T. will however be found at pp.15-27 of the lose pp. below(slip

Id/- D.W.D. 8/8

A.S. R.T.K. 8/8

A copy of the agreement is not available. It may be called for. Draft reply put up for approval.

Id/- D.W.D. 5/8

A.L.R.

I agree with A.S.

Reply may be.

The view expressed by the Solicitors seems correct. The position is also correctly put by the Brick Controller in his letter No.P.W./Brick 9975 dated 30th July 1942. At p.37 of the Other file. The method of quoting adopted in the contracts affords means of evading the Brick Control Order 1942. To prevent such evasion in future it appears necessary to insist that contractors should quote separately the price of the bricks with one of the 4 catogories of the Brick Order and the cost of transport or else amend the Brick Order suitably.

Id/- R.S.H. 11/8

U.R. to H.D. (Poll - A.R.P.) No.6633. dt.15.8.42.

R.A.A. I agree.

Sd. P.N.Moos 13/8

Submitted.

It is proposed to requisition a pigeon coop belonging to the Gaud Saraswat Brahmin Temple Trust at Bhuleshwar under sub-rule (1) of rule 75A of the Defence of India Rules. Under the proviso to the sub-rule, no property used for the purpose of religious worship shall be requisitioned under the rule. The question for the consideration of the R.L.A. is whether the pigeon coop can be said to the "property used for the purpose of religious worship within the meaning of the proviso to sub-rule (1) of rule 75A.

2. It is stated in the City Engineer's letter at p.21 ante that the pigeon coop in question belongs to the Gaud Saraswat Brahmin Temple Trust. Presumably the coop stands on part of the temple premises. The institutions of Hindu Law known as Devasthansor temples have large endowments especially in the shape of lands, assignments of public revenue and jewellery. These institutions have been established for the spiritual benefit of the Hindu community in general, or for that of partucular sects or sections thereof (Mulla's Hindu Law, 9th Edition, page 479). Temples are conducive to special welfare by affordi opportunities for prayer and worship (Ibid, page 48(It is not uncommon for religious-minded people on coming out of the temple to feed the pigeons, the object being to gain spiritual welfare. The U.S., H.D. (A.R.P.), considers that a pigeon coop cannot be used for religious worship. But if such a view is taken it would be difficult to define what property of a temple can be said to be used for the purpose of religious worship. It does not, therefore, appear legally feasible to requisition the property under

pp. 23-24 ante

rule 75A.

D.D.
22.6.42.

A.S.

The proviso to sub-rule(1) or rule 75A of the Defence or India Rules inter alia provides that no property used for the purpose or religious worship shall be requisitioned under this rule. In the trial of a person for disturbing a congregation assembled for religious worship the Court defined "religious worship" as where the congregation has assembled for the purpose of performing Acts of adoration to the Supreme Being, or to perform religious service in the recognition of God as as object of worship, love and obedience (see Iyer's Law Lexicon, page 1103; but unfortunately the case has not been quoted). On the same analogy "property used for the purpose of religious worship" in the proviso to sub-rule (1) or rule 75A of the Defence of India Rules would mean a property used for performing acts of adoration to the Supreme being or for performing religious service in recognition or God as an object of worship, love and obedience. The pigeon coop in question belonging to the Gaud Saraswat Brahmin Temple Trust may have been built for the purpose of enabling the devotees of the temple to feed the pigeons as an act or charity; but it does not appear to be a place used for performing acts of adoration to the Supreme Being or for performing religious service in recognition of God as an object of worship, love and obedience. Consequently the pigeon coop would not fall under the proviso to sub-

Office of the R.L.A.

The "dipmal" is a pucca structure standing on private land. It is property used for the purpose of religious worship and cannot therefore be requisitioned under the provisions of rule 75-A of the Defence or India Rules. It may be possible to enforce its removal by an order under rule 52-B. But such a drastic step would be inadvisable lest it offend the religious susceptabilities of the Hindus. Negotiations with the temple trustees or the owner might perhaps be more appropriate in the peculiar circumstances of the case.

Sd/- P.N.Koos.
11/8/42

Remembrancer or Legal Affairs.

U.R. to H.D. (Poll) A.R.P., No.5535 dated the 12th August 1942.

S.I./4/5/56.
4C.

Office of the R.L.A.

The Collector of Satara has requisitioned certain lands in the district under rule 75A of the Defence of India Rules for a Tank field Firing Area. The lands consists of (1)Whole Villages, (2) Village sites and (3) individual survey numbers in villages. The question is how the order of requisition should be published. The Secretary, R.D., considers that individual notices under rule 119 of the Defence of India Rules cannot be dispensed with in these cases.

2. Rule 119 of the Defence of India Rules requires an officer making an order in writing under the said rules to publish notice thereof in such manner as may, in the opinion of such officer, be best adapted for informing persons whom the order concerns if the order is of a general nature or affecting a class of persons; and in the case of an order affecting an individual person, the order is required to be served on that person (1) personally, (2) by post or (3) by leaving an authentic copy or affixing a copy, etc. The order made by the collector of Satara in this case requisitions (1) whole villages, (2)village sites and (3) certain S.Nos. in certain villages. So far as wholy villages and village sites are concerned, the order affects all villagers or particular villages and all villagers of each of these villages constitute a class of persons; they being an ascertainable body or individuals (cf A.I.R.1937 Cal.691: Iyer's Law Laxicon, p.214). Consequently notice thereof can be published in such manner as the collector considers best suitable. As regards particular S.Nos. in the villages mentioned, the order would appear to affect individual persons and personal service of notice as prescribed by the latter part of rule 119 would be necessary. Even in the case of the requisition of whole village and village sites, there would be no legal objection to serving also individual notices. In such cases where the work involved or some other factor does not make it impracticable the service of both kinds of notices would appear desirable.

Sd/- [illegible]
11/8

Remembrancer of Legal Affairs.

U.R. to R.D., No.342, Confl., dated the 12th August 1942.

E.I./4-5-56.
4c.

Office of the R.L.A.

The first question for consideration is whether Government can under any provision of Law order mills not to close. Rule 81(2) (c) of the Defence of India Rules provides that the Provincial Govt. so far as appears to it to be necessary or expedient for securing the defence of India or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community may by order provide for regulating the carrying on of any undertaking engaged in, or capable of doing, work appearing to the Provincial Govt. essential to any of the above mentioned purposes. A mill is an undertaking within the meaning of this rule (see definition of the term 'undertaking' in rule 81(1) of the rules). It is presumed that the mills referred to in A (H)'s note produce cloth and articles essential to the life of the Community and for war purposes. If so, the mills can be held to be engaged in, or capable of doing work essential to the purposes of securing the defence of British India, the efficient prosecution or war and the maintenance of supplies essential to the life of the community. An order not to close the mills would be an order for regulating the carrying on of the mills and consequently it is competent to Govt. under rule 81(2) (c) to order the mills not to be closed. Furthermore clause (i) of Rule 81(2) (c) empowers Govt. specifically to make orders in case of such undertakings for requiring work to be done by them. The 'work' referred to in this provision would be the ordinary work done by the undertaking. Consequently it will also be possible for Govt. to take action under this provision and make an order requiring the work in the mills to be done so that the mills cannot be closed down.

2. The next question for consideration is whether Govt. can order the employers in respect of the mills to pay all millhands who turn up for work ~~xtkx~~ and are told to go away because the mills cannot work with certain departments idle. There is no provision in the Defence of India Rules under which Govt. can order the employers to pay the millhands their wages. Such an order cannot be held to be an order for regulating the carrying on or any undertaking and is not, therefore, competent under rule 81(2) (c)

of the rules. Clause (iv) of this rules provides for making an order for requiring, regulating or prohibiting the engagement in the undertaking of an employee or any class or classes of employees. An order under this clause can be made for requiring or regulating the engagement only of an employee etc. No order can be made under this ~~max~~ clause for payment of the wages to the employees engaged. Clause (r) of rule 81(2) empowers Govt. to make orders for any incidental and supplementary matters for which the Provincial Govt. thinks it expedient for the purposes of an order made umer other provisions of rule 81(2)to provide. An order compelling the employers to make payments cannot be held to be an order for any such incidental or supplementary matters and will not, therefore, be competent under this provision. The question of payment of wages falls, therefore, to be determined by the terms of the contract of employment, and the payment of wages act (and the machinery for settling any disputes respecting the payment may be the Civil Court or any special tribunal set up under special Acts as the case may be).

3. A copy of the R.L.A's opinion on a similar reference made by A(H) direct is annexed herewith.

Sd/- P.N.Moos.
15/8

Remembrancer of Legal Affairs.

U.R. to P. and S.D., No.6645, dated the 15th August 1942.

S.I./4/5/56.

40.

Copy of extract paragraph 3 of D.O. letter No.A.R.P. Struct-19, dated 21st July 1942, from the City Engineer, Bombay.

"3. Those landlords, who have either submitted alternative proposals or have asked for brick licences, have raised several issues the following of which require clarification:-

Some owners, who are anxious to carry out the work immediately, are not in a position to do so as the occupants of the proposed 'Safety' rooms refuse to give vacant possession thereon stating that a tenant cannot be ejected during the monsoon period. R.L.As advice may therefore be obtained on the following points:-

i). The form of the notice to be served by the landlord on the tenants for vacating such rooms.

ii). The minimum time to be given for handing over vacant possession.

It may be pointed out that even if the rooms were vacated in time, it may not be possible for the owner to carry out the protective works for a long time if the shortage of materials continues and in that case the rooms will remain vacant and the owner will lose rent. I am however of the opinion that we may not, for the present, insist entirely on the vacation of the rooms provided the landlord carries out the protective works immediately and takes steps to make the rooms available to the other tenants also during odd hours of day and night and to remove heavy furniture therefrom.

iii). The procedure to be adopted for ejecting the tenant in case he fails to vacate and whether any police help will be available for this purpose."

S.I./4/5/50.
40.

Office of the R.L.A.

Landlords in Bombay have been required by Government to construct Air Raid Shelters and for that purpose it is some times necessary for the landlord to require his tenant to vacate the per premises. In this connection the following questions are raised for the consideration of the R.L.A.:

1). The form of the notice to be served by the Landlord on the tenant.

2). The minimum time to be given for vacating the premises; and 3). The procedure to be adopted for ejecting the tenant in case he fails to vacate and whether any police help will be available for this purpose.

2. As pointed out in para. 1 of R.L.A's opinion No.4223 dated the 22nd May 1942 it is the duty of the landlord to construct an Air Raid shelter as directed by an order under sub-rule (1) of rule 51-I or the Defence or India Rules; and he has a right to evict the tenant if necessary (see para.3 or that opinion). No particular form has however been prescribed by the Rules; and consequently the notice may simply state that as the tenement is required for the purpose of an Air Raid Shelter, the tenant is called upon to vacate it. The contention of the tenants that they cannot be evicted during the monsoon will not stand in view of section 3 of the Defence of India Act; and no suit, prosecution or other legal proceedings shall lie against the landlord for such action (vide sec.17(1)).

3. The minimum time that the landlord should give to the tenants for handing over vacant possession of the premises will depend largely upon the circumstances of each case. I.C. in a particular locality it may not be reasonably possible to secure new premises within a period or 24 hours and it may be necessary to give at least seven days notice. The notice should be of a period as reasonably long as the urgency of the case will permit. For the tenants satisfaction and the landlords protection it seems desirable for the landlord to state that he has been ordered to construct an Air Raid Shelter. But the essential thing is not the form of the notice but that the landlord should act bonafide in pursuance

of the order. Further, the form of the notice is a matter for the landlord to decide, not for Govt. to prescribe.

4. Under rule 132(1) of the Defence of India Rules any authority officer or person who has passed the order under rule 51-1 may take or cause to be taken such steps and use or cause to be used such force as may in the opinion of such authority officer or person be reasonably necessary for securing compliance with or for preventing or rectifying any contravention of, such order, or for the effective exercise or such power. Refusal of a tenant to vacate premises even after notice would ultimately involve contravention of the order requiring the landlord to construct an Air Raid Shelter in time. To prevent such contravention it would be competent for the authority issuing the order to take or cause to be taken such steps and use or cause to be used such force as may in the opinion of such authority be reasonably necessary for evicting the recalcitrant tenant. The landlord will therefore have to seek the assistance of the authority concerned to get the tenant ejected if the premises are not vacated in pursuance of the notice.

Sd/- P.N.Moos
18/8

Remembrancer of Legal Affairs.

U.R. to H.D.(Poll) A.R.P.No.6758, dated the 19th August 1942.

S.I./4/5/56.
4c.

Office of the R.L.A.

The question for the Remembrancer of Legal Affairs' consideration is whether under clause 3 of the Foodgrains control order, 1942, as amended by notification No.p. & S.C. 500/42, dated the 4th July 1942 (Department of Commerce), special authorization empowering District Magistrates to issue licenses is necessary.

2. Clause 3 of the Foodgrains Control Order, 1942, as amended, provides that no person shall engage in any undertaking which involves the purchase, sale or storage in wholesome quantities of any foodgrains except under and in accordan with a license issued in that behalf by the Provincial Government or by an officer authorised by the Provincial Government in this behalf. In pursuance of the specific provision made i clause 3 of the Order, Government should issue an order authorising the District Magistrates to issue licenses under clause 3 of the Order. In view of the amendment of clause 3 of the Order, the view expressed in the Remembrancer of Legal Affairs No.5873, dated the 18th July 1942 would no longer hold good.

Sd/- P.N.Wood
18/8

Remembrancer of Legal Affairs.

U.R. to the C.D., No.6768, dated the 19th August, 1942.

S.I./4/5/56.
40.

Office of the R.L.A.

In an interview granted to the Grain Merchants' and the Rice Merchants' Associations on 24th June 1942, Secretary, C.D. stated that he would not insist upon the applicants for licenses under the Food grains Control Order, 1942, supplying information regarding income-tax for the years 1939-40 and 1940-41 which is required by clause 8 of the application form. On the same day A(F) directed that the Merchants might be asked to supply the information regarding income-tax confidentially to the Controller in a sealed envelope as the information was needed to prevent persons of no standing getting licenses and cutting into the legitimate wholesellers' profits. As the licenses had to be issued before 1st July 1942, Mr.Samarth on the basis of Secretary, C.D's statement, issued licenses without insisting upon the information regarding income-tax. On 13th July however, in accordance with A(F)'s orders of which he was not previously aware, he called upon the licensees to furnish the information regarding income tax, if need be confidentially. He also warned them that if the requisite information was not supplied, licenses provisionally granted to them might be withdrawn. The Grain Merchants' Association have now made a representation to Govt. requesting it to reconsider the matter in view of the assurance given by Secretary, C.D. In this connection Secretary, F.D., is of opinion that a statement by a Secretary to Government that he would not insist upon certain things being done, cannot be regarded as an assurance and that even if it were an assurance it was ab initio void as Secretary, C.D. has no power to give such an assurance. He has suggested that the best course would be to explain the circumstances to the Association and to tell them that there was no authority for the statement made to them that the information regarding income-tax would not be insisted on and that they must therefore furnish the information. The Remembrancer of Legal Affairs is requested to advise as to the legality of the course proposed and whether licenses issued without getting this information can be cancelled if the licensees refuse to furnish the information.

2. Clause 5 of the Foodgrains Control Order, 1942, provides that applications for licences under the said order shall be made in Form B to the Provincial Government or to an officer authorised by the Provincial Govt. in this behalf. The use of the word shall shows that the provisions of this clause are mandatory and that before issuing the licences Govt. can insist upon the applicant supplying information in respect of all the items mentioned in Form B. But once the licences are issued then they can be cancelled only under clause 6 of the Order. That clause provides

> 'No person being the holder of a licence issued, or deemed to be issued, under this order shall contravene any of the conditions mentioned in Form A; and if any such person contravenes any of the said conditions, then without prejudice to any other action that may be taken against him, his licence may be cancelled by order of the Provincial Govt."

The licences can therefore be cancelled for breach of any of the conditions of the licence as given in Form A in the 2nd Schedule to the Order. When the licences were granted to the applicants by Mr. Samarth, they were not informed that the licences were granted provisionally nor was there any endorsement on the licences to that effect. It does not seem in fact that they were provisional. The licences were granted under the Food-grains Control Order, 1942, and cannot now be cancelled for refusal to supply information regarding income tax as required by clause 8 of the form of application in the 2nd Schedule to the order. Govt. cannot now insist on the information being supplied. It is true that Govt. is not bound by a mere verbal assurance given by a Secretary to Govt. especially in respect of an order made by the Govt. of India but the fact that this assurance was acted upon and licences were issued without insisting on this information would be construed as a waiver of that condition by Government. Government may try to get the information from the licensees byt it seems it would not be competent for Govt. to cancel their licences if they refuse to supply it.

Regarding the doubt raised by A(F) at P.11 ante about the legality of the demand for income tax information from applicants, the only provision having some bearing on the point is section 54 of

or the Income-Tax Act. This section enacts that all particulars or income furnished to the Income Tax authorities under the Act are to be trated as confidential and no Court can compel any public servant to disclose them in any legal proceeding. It is obvious that this section can have no application to cases like the one under consideration where the information regarding incom tax is demanded from the applicants themselves and not from public servants.

Sd/- P.N.Koou
19/8

Remembrancer or Legal Affairs.

U.R. to C.D., No.6771, dated the 19th August, 1942.

S.I./4/5/56.
40.

Office of the R.L.A.

The question for the consideration of the Remembrancer of Legal Affairs is whether the construction of the two new buildings, one belonging to the Bank of India and the other to the Mercantile Bank of India Ltd., which are at present under construction, can be stopped under Government Order Home Department (Poll A.R.P.)., No.388-B, dated the 21st July 1942 issued in exercise of powers conferred by rule 76-B of the Defence of India Rules.

The aforesaid order of Government directs that no building other than a public building shall be erected, reerected, constructed or altered with the limits of the City of Bombay and the Bombay Suburban District except under the authority of a written permit granted on behalf of Government by the Brick Controller for the Province of Bombay. Under this Order it appears that even buildings under construction can be stopped although if that was the intention, it has not been specifically expressed. The only question material for consideration is whether these Bank buildings under construction are public buildings. "Public Buildings" has not been defined in the Order. Consequently it will have to be given its ordinary meaning. It is not a clearly defined term. The following definition is given in Iyer's Law Lexicon. The term "public buildings" includes a stalehouse, court-house, country-house, town-house, arsenal magazine prison, jail, workhouse, poor-house, market or other buildings belonging to the state or to any country, town, city or borough in the State, any church, chapel, meeting-house, or other building generally used for religious worship and any college, academy, school-house, or other building generally used for literary instruction. Whatever definition be accepted, it does not appear that it could include bank buildings. Consequently there appears to be no legal objection to stopping the construction of these bank

bank buildings at a convenient stage.

Sd/- P.N.Moos
10/8

Remembrancer of Legal Affairs.

U.R. to H.D., (Poll) - A.R.P., No.6495, dated 11th August 1942.

Submitted for signature.

para 1 of A.S's note has been omitted.

Id/-

A.S.

I.d/-

R.L.A.

Submitted after issue with an Index card.

File in O.D. of 9/42

Id/-

S.I./4/5/56-
4c.

Office of the R.L.A.

The question for the consideration or the Remembrancer of Legal Affairs is whether Government would be liable to pay compensation in cases where the construction of a building is stopped at a convenient stage under Government Order, Home Department (Political -A.R.P.), No. 388-B, dated the 21st July 1942 issued in exercise or powers conferred by sub-rule (1) or rule 76-B of the Defence of India Rules.

2. Sub-section (1) of section 17 of the Defence of India Act provides that no suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder. Sub-section (2) provides that save as expressly provided under this Act, no suit or other legal proceeding shall lie against the Crown for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder. It is true that section 19 expressly provides for payment of compensation for compulsory acquisition of immoveable property etc. Similarly Rule 96 of the Defence or India Rules provides for payment or compensation in cases where in pursuance of any of Rules 49, 66, 72, 78 and 80 any property is removed destroyed rendered useless, used, requisitioned or acquired by or otherwise placed at the disposal or under the control of the Central Government or the Provincial Government and the circumstances are not such as to render the provisions or section 19 of the Defence of India Act applicable. But the order to stop building work under construction at a certain stage is passed under Govt. Notification, Home Department (Political - A.R.P.), No.388-B, dated 21st July 1942 issued in exercise of powers vested under rule 76-B of the Defence of India Rules. Rule 76-B is not mentioned in rule 96. The stoppage of a building construction involves no acquisition or property under section 19 of the Defence of India Act. Consequently neither section 19 nor rule 96 will have any application and section 17 gives ample protection.

to Government. No damage or compensation can therefore be claimed from Government for the stoppage of a building work under construction at a convenient stage.

sd/- P.N.Moos. 26/8

Remembrancer of Legal Affairs.

U.R. to H.D. (A.R.P.), No.6975, dated the 27th August 1942.

Submitted for signature.

Id/-

R.L.A.

Submitted after issue with an Index Card.

File in O.D. of 9/42.

Id/-

S.I./4/5/56.
4c.

R.I.No.9310.
24.8.42.

Submitted.

The question for the consideration of the R.L.A. is whether the publication of the report of Dr. Chandulal Desai's speech in the issue of 'Pratap' dated 5.8.1942 is a "Prejudicial act" falling under clause (k) of sub-rule 6 of rule 34 of the Defence of India Rules.

2. The report of the speech is at p.1 ante. Under rule 34 (6) (k) of the Defence of India Rules any act which is intended or is likely to influence the conduct or attitude of the public or of any section of the public in a manner likely to be prejudicial to the defence of British India or to the efficient prosecution of war is a "Prejudicial act". In the speech the speaker is reported to have said that if Indians did not become free this time, then all their trade and commerce will be ruined for ever and they will never recover from the blow for fifty years. The speaker further desires the people not merely to read the papers and remain passive but to act. Finally, he exhorts the audience to prove by deeds that in India too there are brave men who are prepared to boldly face the bullets. So far as this latter part of the report is concerned the speech appears unobjectionable. But the first sentence is of some importance. That sentence indirectly urges the people to join the freedom compaign (Probably the proposed C.D. Movement) immediately; as unless India became free this time, all trade and commerce would be lost.

The exhortation to become free this time relates to the circumstance of the British Govt. being at war. Read as a whole therefore the report appears likely to influence the conduct of the public in a manner prejudicial to the defence of British India or to the efficient prosecution of war. The answer to the question raised therefore is in the affairmative.

Id/- D.W.D.
26/8

A.S.

The reported speech or Dr. Chandulal read as a whole does not appear to be objectionable. The speech may have some allusion to the present activities of the Congress; but it is by no means clear. It is possible to argue that the freedom advocated by Dr. Chandulal May be freedom promised by the British Govt. after the War and that "the facing of bullets may mean facing of bullets on the battle field.

Id/- R.T.K.
26/8

A.L.R.

I suggest the following reply.

That part of the speech which is included on this file fails to make sufficiently clear the nature of the action to which the speaker was urging his hearers. It may be that he was urging them to support actively the Congress compaign of civil disobedience but without something more definite it is difficult to say that the article comes within clause (k) of Rules 34(b) of the D or I rules.

Id/- R.S.H.
26/8.

S.I./4/5/56.
40.

Office of the R.L.A.

The reported speech of Dr. Ojandulal Desai is capable of a double interpretation. If regard be had to the circumstances under which it was delivered the impression it must have created on the Congress minded audience could not have been anything short of an exhortation to join the Congress campaign of freedom through civil disobedience. On the other hand, if the speech is read objectively it is possible to construe it as an exhortation to join the forces and fight for freedom. In any event the speech, read as a whole, is not such as to call for action.

Sd/- P.N.Moos.
28/8

Remembrancer of Legal Affairs.

U.R. to H.D., (Special) No.7025 dated the 28th August, 1942.

S.I./5/5/56.
4c.

R.I.No.9309, dated 24-8-42.

Submitted.

2. The question for consideration is whether the article containing commends on the starting of the journal "The Peoples War" by the communist party, appearing in the issue of 'the Janata' dated the 1st August 1942, falls within clauses (d), (e), (f) and (k) of rule 34(6) of the Defence of India Rules.

3. The article seems to offend against clause (d) (e), (g) and (k) of Rule 34 (6) of the D. of I. Rules, the article fall under clause in that it tends to prejudice the recruitment to the army on the plea that this is not a peoples' war for India as it is a peoples' war for Russia or China but that it is a war fought for imperialistic purposes and that the Indian masses will be gripped in shackles as a result of the War.

Besides the article also suggests that there is no sufficient stock of arms for the recruits. The article falls under clause (e) in that it tends to bring into hatred or contempt or cause disaffection towards Govt. by stating that there is partnership between the Govt. and the capitalists and that Govt. has taken away the heaps of corn. There is therefore a suggestion that Govt. is thereby responsible for the scarcity of corn and starvation of the people. The reference to the result of the war on the masses and shortage of arms is likely to cause fear or alarm to the public and the article therefore appears to fall under clause (g). The article tends to prejudicially influence the conduct or atti-

tude of the public to the defence of British India or to the efficient prosecution of the war and falls under clause (k) also. The article however does not fall under clause (f) as 'capitalist' is not a class or an ascertainable group (34 B. & R. 1642) and the article does not tend to promote feelings of enmity and hatred between different classes.

Id/-S.R.Potnis
26/8

A.S. I agree.

The article read as a whole is objectionable and comes within the perview of clauses (d), (e), (j) and (k) of sub-rule (6) of rule 34 of the Defence of India Rules.

Id/- R.T.K.
26/8

A.L.R. I agree

Reply may be as A.S's note.

Id/- R.S.H.
26/8

R.L.A. P.N.M???
27/8

U or to H.D. (sp) No 7026 D/ 28-8-42.

S.I./5/5/56.
4c.

R.I.No.9346.
26.8.42.

Submitted.

2. The question for consideration is whether paras 5 to 7 of the order of requisition issued by the Collr. of Poona under rule 75-A of the Defence of India Rules in respect of the property situate on the Naylor Road in the Poona City, require any amendment.

3. Paras 5 to 7 do not appear to require any amendment. It is true that the order of requisition is issued under rule 75-A but para.5 which relates to Rule 78 does not refer to matters falling under rule 78(3) which requires an order from Govt. but seems to refer to rule 78(2) under which no order is necessary. Besides the question of compensation in respect of action taken under rule 78 is covered by para.4 of the requisition order which is drafted in general terms. There does not appear any legal objection to the inclusion of condition (5) in the said order.

Id/- S.R.Potnis
28/8

A.S.

Strictly speaking para 5-7 of the Collector order are unnecessary since they merely describe what procedure would be followed if an order under rule 7[illegible] were found necessary. There is however no objection to retaining them since no prejudice to the rights of any is involved.

Id/- R.T.K.
29/8

P.T.O.

A.L.R.

Para 5 is mainly an order under rule 75A(5) (b) I do not think there is any objection to combining such an order with an order of requisition. It can hardly be said that paragraph is unnecessary. I do not think there is any legal objection in any of the three paragraphs. Reply may be:-

Paras 5 to 7 do not appear to require any amendment.

Id/- R.S.H. 31/8

R.L.A.

I agree.

P.N.Moos. 1/9

U.R. to R.D. No.7118, dated 2nd September 1942.

Submitted after issue.

No Index Card appears to be necessary.

File in O.D. of 1/42.

Id/-

S.I./5/5/56.
4c.

Office of the R.L.A.

The report published in the Lokmanya mentions the following three incidents:-

i). A certain student when going to school, had his Gandhi cap knocked off by a soldier with the point of the bayonet;

ii). Some police officers and constables arrested one Nemichan Hansraj and 20 others when they were inside their house and there was no disturbance at the place; they were not released on bail nor allowed to see their relatives; and

iii). Some soldiers entered a hotel in Surti St. Danabundar and beat the employees and customers.

2. The question for the consideration of the Remembrancer of lega Affairs is whether the report falls under clause (k) and/or (ee) of rule 34(6) of the Defence of India rules.

3. The report read as a whole cannot be said to tend to influence the conduct or attitude of the public or of any section of the public in a manner likely to be prejudicial to the defence of Britu India or the efficient prosecution of war AND consequently it will not come within the purview of clause (k) of rule 34(6) of the Defence of India Rules. The first and third incidents are likely to bring into hatred or excite disaffection towards His Majestys' Forces and also to cause alarm to the public. The report might the efore come within the mischief of clauses (ee) and (g) of rule 34(6 But it is doubtful if it is really strong enough to be actionable.

Sd/- P.N.Moos.
29/8

Remembrancer of Legal Affairs.

U.R. to H.D., (Special) No.7060, dated 29th August 1942.

S.I./5/5/56.
4c.

Office of the R.L.A.

Joint Secretary, G.D.'s view of the point raised by the rent Controller in paragraph 3 of his Memorandum is correct.

2. The following question is raised by paragraph 4 of the Rent Controller's Memorandum: If the proprietor of a boarding house himself resides on the premises, do they come with the scope of the order as 'let for the purpose of residence'?

3. If the premises are let mainly for residential purposes to the tenant and the tenant keeps a boarder or two as paying guests either to supplement his income or for the convenience of the boarder, the premises might be said to be "let for the purpose of residence" within the meaning of that expression in section 3(3) of the Bombay Rent Restriction Order, 1942, and the said Order would therefore apply to such premises. If on the other hand, the main purpose for which the premises are rented is for carrying on the business of running a boarding house and the tenant as the proprietor resides on the premises for the purpose of superintending his business or even for his convenience, such premises would not be covered by the Bombay Rent Restriction Order. Whether particular premises are used for residential purposes or business purposes is a question of fact to be decided on the circumstances of each case.

Sd/- P.N.Woods
26/8

Remembrancer of Legal Affairs.

U.R. to G.D., No.6981, dated the 27th August 1943.

S.I./5/5/56.
40.

Office of the R.L.A.

In connection with the interpretation of the Foodgrains Control Order, the G.D.has raised the following questions for R.L.A's consideration.

1). Whether under para.5 of Form A in the second schdule to the Foodgrains Control Order, 1942, a person can purchase in one transaction 20 maunds each of the different kinds of foodgrains without a licence or whether the total quantity of all the kinds of foodgrains purchased in one transaction should not exceed 20 maunds;

2). Whether the expression "in wholesale quantities" in clause 5 of the Order, qualifies "Storage" or "Sale" in the expressio "Storage for sale"; in other words, whether a retail dealer who has stored foodgrains in quantities exceeding 20 maunds is required to take out a licence in Form A;

3). Whether under clause 3 of the Order, the Provincial Government or any officer authorised by the Provincial Govt. for issuing licences can refuse a licence and whether a reason must be given for such refusal.

4). Whether the sales made in their retail shops by retail dealers who have to take out licences in Form A because or their purchases in any one transaction exceeds 20 maunds are governed by the licence (especially para.6) which they have taken out not for any sales in wholesale quantities but merely for purchases.

5). Whether the D.M. can be authorized under clause 6(2) or the Order to suspend or cancel a licence.

2. Question No.1, Para.5 of the license in Form A in the Second Schedule to the Foodgrains Control Order, 1942, provides that the licensee shall not in any one transaction sell any of the food grains mentioned in para. 1 in quantities exceeding 20 maunds to any person who does not hold a licence under the Foodgrains Control Order 1942, nor is otherwise authorized to purchase the foodgrains in wholesale quantities. The word "any"

may have one of several meanings, according to the context. To ascertain the sense in which "any" has been used in para.3, it is necessary to consider the provisions of the Order itself. Clause 3 of the Order provides that no person shall engage in any undertaking which involves the purchase, sale or storage for sale, in wholesale quantities of any food grain etc. "Food grain" as defined in clause 2(a) means such one or more of the commodities specified in the First Schedule to this order etc. "Any food grain" in clause 3 would therefore mean any one or more of the commodities. The words "any of the food grains" in para 5 of the license in Form A appear to be synonymous with the words "any food grain" in clause 3 of the Order. If so, the word "any" in para.5 of the license in Form A must, it seems, mean "one or more". Consequently under paragraph 5 of the total quantity of any or all commodities sold by or purchased from a licensee must not exceed 20 maunds unless the purchaser has a license or authorization. But if that was the intention, it has not been expressed with the maximum of clarity and therefore the matter cannot be said to be quite free from doubt.

3. Question No.2.- It is clear from the frame and punctuation of clause 3 that the words "in wholesale quantities" are to be read not with "sale" alone, but with the whole phrase "storage for sale". "Storage for sale" explains itself but it is not easy to say what is the exact meaning of "in wholesale quantities". There is no definition of that term. "Sale in wholesale quantities" and "purchase in wholesale quantities" are both defined. In both these definitions the measure is 20 maunds in any one transaction. That is a purely arbitrary measure which may or may not be suitable for controlling the storage of grain. And it seems doubtful whether that measure could legally without clear language to that effect be extended to limit also the storage of grain. But in the absence of any other measure it is presumed that "wholesale quantities" when applied to storage means, as the case of sale and purchase, a quantity exceeding 20 maunds. If this is correct, the intention of clause 3 is that an amount exceeding 20 maunds should not be stored without a license or authorization. But again, if that was the intention, it has not been clearly expressed.

4. Question No.3 power to issue a license under clause 3 of the order vests in the Provincial Govt. or in any Officer authorized by the provincial Govt. Power to issue a license includes power to refuse a license. Consequently, it would be competent to the Provincial Government or any officer authorised in this connection to refuse a license in cases where the applicants are unfit or undesirable persons; and it is not necessary to assign any reasons for such refusal.

5. Question No.4:- A license in Form A in the second schedule to the Order would be necessary for purchase, sale or storage for sale, in wholesale quantities of food-grains. Even if a license is taken only for purchase in wholesale quantities, the license issued would be in the same Form A and consequently all the conditions of the license will be operative. Condition in para 6 of the license will have therefore to be complied with.

6. Question No.5:- Under clause 6(2) of the Order the power to cancel or suspend a license without giving any previous notice or without assigning any reason vests only in the Provincial Govt. In the absence of any specific power of delegation in order the power of suspension or cancellation can be exercised only by the Provincial Govt. The D.M.cannot therefore be authorised to exercise powers vested in Govt. under clause 6(2) of the order.

Sd/- P.N.Moos
8/9

Remembrancer of Legal Affairs.

U.H. to G.D. No.7272 dated the 9th September 1942.

S.I./5/5/56. 4c.

No.33 of 1929.
ADVOCATE GENERAL'S CHAMBERS,
High Court,
Bombay, 4th July 1929.

With reference to the Unofficial Reference from the Home Department No. S.D.1152 dated 25th June 1929, I have to state as follows:-

1. The question to be considered is whether a meeting which is held on private premises and admission to which is confined to members of a Society or Association, e.g., the members of a Youth League, or of a Trades Union, and to which non-members are refused access, comes within the definition of "public meeting" given in Sec.3 of the Prevention of Seditious Meetings Act, 1911.

2. The expression "public meeting" is defined in sec. 3(1) of the Act as meaning a meeting which is open to the public or any class or portion of the public. Sec.3(2) provides that a meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by tickets or otherwise.

3. A meeting of a Society or Association, e.g., a Youth League or a Trades Union, which is held in private premises and admission to which is confined to members therof, and to whic h non-members are refused access, is not a meeting "open to the public or any portion of the public" within the meaning or sec.3, and is not therefore a public meeting. But it would, I think, be a public meeting if members of the public (who are not members of the Society or Association) are invited or admitted to the meeting whether the admission of such members of the public is general or restricted.

4. It may be added that in determining whether a meeting is a public meeting within the meaning of the Act, no regard is to be had to the subject to be discussed at the meeting. The question of subject comes in when sec.4 is to be applied.

5. A short history of the legislation on the subject is annexed hereto.

Sd/- D.F.Kulla,

Ag. Advocate General.

S.I./5/5/56. 4c.

History of the Legislation.

1). The first enactment on the subject was Regulation or Meetings Ordinance, 1907, promulgated under sec.23 of the Indian Councils Act, 1861. The Ordinance was confined to the Punjab and Eastern Bengal.

2). The next enactment was the Seditious Meetings Act, 1907, It extended to the whole of British India, but it was to have operation only in such provinces as might be notified by the Governor General in Council from time to time. The duration of the Act was three years.

3). Clause (3) of Bill which eventually became Act.VI of 1907 defined the expression "public meeting" as follows:-

"3.(1) In this Act the expression 'public meeting' means a meeting which is open to the public or any definition, class or portion of the public, and at which any subject likely to cause distrubance or illfeeling or any political subject, is discussed by one or more of those present, or any writing or printed matter relating to any such subject is exhibited or distributed.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admissio thereto may have been restricted by ticket or otherwise.

(3) A meeting of more than twenty persons shall be presumed to be a public meeting with the meaning of the Act until the contrary is proved".

4). The latter portion of sub-clause (1) of clause 3 beginning with the words "and at which any subject", etc. was omitted by the Select Committee and transferred to clause 4 of the Bill, and the rest of clause 3 was retained.

The said clause as so modified appeared as sec.3 in the Act of 1907. That section ran as follows:-

"3.(1) In this Act, the expression "public meeting" means a meeting which is open to the public or any class or portion or the public.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

(3) A meeting of more than twenty persons shall be presumed to be a public meeting within the meaning of this Act until the contrary is proved."

(5) The next enactment was the present Seditious Meetings Act,1911. It will be noticed that the definition of "Public meeting" in the Act of 1911 is the same as that in the Act of 1907 except that Sec.3, sub-sec.(3), of the Act of 1907, which provided that a meeting of more than twenty persons ~~shall~~ shall be presumed to be a public meeting public meeting was omitted in the present Act. It appears from the proceedings of Council that exception was taken to that sub-section on the ground that dinner party or social gathering of more than twenty persons might come within the purview of the Act, and this probably accounts for the omission.

S.I./5/5/56. 4c. D.F.M.

Office of the R.L.A.

It is proposed in these papers that a general order should be passed under rule 56 of the Defence of India Rules requiring that at any public meeting held anywhere in the Province the police shall be permitted to be present for the purpose of reporting the proceedings of the meeting. The question that is raised for R.L.A's consideration is whether any meeting can be considered to be a public meeting under the rule so that the police may insist on attending the same in spite of being denied admittance.

2. Sub-rule(2) of rule 56 of the Defence of India Rules provides that for the purposes of the rule any meeting which is open to the public or to any class or portion of the public, whether held in a public or a private place and whether admission thereto is restricted by the issue of tickets or otherwise, shall be deemed to be a public meeting. The said sub-rule corresponds in language to that employed in the definition of "public meeting" in section 3 of the prevention of Seditious Meetings Act, 1911. The scope of that definition is fully considered in the opinion No.33 of 1929 given by the Advocate General (see page 67 of H.D. (sp) File No.751 of 1929), and the advice given therein would apply in relation to rule 56 of the Defence of India Rules also. It would therefore appear that all meetings cannot be considered to be public meetings within the meaning of rule 56 of the Defence of India Rules and no order can be made under this rule enabling the police to attend a meeting which does not fall within the meaning of public meeting.

Sd/- P.E.Wood.
28/8

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl) (1), No.371-Confl., dated 29th August 1942.

S.I./5/5/56. 40.

Office of the R.L.A.

With reference to R.L.A's opinion No.371-Conrl., dated 29th August 1942 R.L.A. is requested to advise what would be the position when a political leader addresses members of a society.

2. When a political leader is invited to address the members of a societ on any particular subject, the meeting where even guests may be present or invitation e.g. a Rotary meeting or College debate, cannot be deemed to be open to the public and still retains its character or a private meeting. The position would be different if admission or non-members is by sale or tickets. Much would depend on the facts of each case.

O.C. P.N.Woos. 25/9

Remembrancer or Legal Affairs.

N.C.A. 25/9

Submitted

D.S. (before issue) N.R.D./25/9

A.L.R.(,, ,,) K.A./25/9

S.A.S.(,, ,,) R.T.K./25/9

U.R. to H.D. (Spl) (1) No.434 - Conrl., dated 25th Sept.'42.

S.I./5/5/56. 4c.

Office of the R.L.A.

The question for consideration is whether the article published in the issue of the Bombay Sentinel, dated the 24th September 1942 under the caption "Give a fair deal to Indian Soldiers" is actionable.

2. The article is objectionable in that it criticises the racial discrimination shown in the matter of pay, food, barrack accommodation etc. of the Indian and British soldiers. Although it is possible to bring the article within the purview of clauses (b) and (d) of rule 34 (6) of the Defence of India Rules, it is doubtful if the Courts would hold it to be strong enough to be actionable as the underlying object seems to be to bring about a futher improvement in the conditions of service of the Indian soldiers.

P.F.Khosla.
2/10

Remembrancer of Legal Affairs.

U.R. to H.D.(Sp) No/6003 dated 2nd October 1942.

D.I./5/56..4c.

Office of the R.L.A.

A large number of municipal employees of the essential services, who formerly resided in rooms rented by them in various parts of the City, have now been provided rent free accommodation Bombay in private buildings requisitioned through the Collector of Bombay. These employees have now represented to the Municipal Commissioner for the City of Bombay that as soon as hostilities are over, arrangements should be made to provide accommodation for them in their original quarters from which they have been shifted. The Municipal Commissioner states that it will be possible to comply with their request only if the rooms in which they were formerly residing are requisitioned and restored to them on their agreeing to pay old rents.

2. The question for the consideration of the Remembrancer of legal Affairs is whether there would be any legal difficulty in requisitioning the old rooms for the municipal employees after the hostilities are over.

3. The preamble of the Defence of India Act, 1939, indicate that the Act is enacted on account of the grave emergency which exists whereby the security of India is threatened by war and which renders it necessary to provide for special measures to ensure the public safety and interest and the defence of British India and for the trial of certain offences. The preamble thus contemplates that special measures for ensuring the public safety etc. are proposed to be taken only during the emergency. Under rule 75-A of the Defence of India Rules if in the opinion of the Central Government or the Provincial Government it is necessary or expedient so to do for securing the defence of British India, public safety, the maintenance of public orde or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community, that Government may be order in writing requisition any property, moveable or immoveable and may take such further orders as appear to that Government to be necessary or expedient in connection with the requisitioning. There would be no question of securing the defence of British India or prosecution of the war as contemplated by rule 75-A after (Contd.)

Office of the R.L.A.

The question raised for the consideration of the Remembrancer of Legal Affairs are:-

1). Whether the rules made under section 386(2), Criminal Procedure Code, apply to the recovery of fines imposed under the Collective Fines Ordinance, 1942; and

2). Whether the power of issuing demand notices and warrants can be delegated by District Magistrate to Subordinate Magistrates.

2. Question No.1:- Section 25 of the General Clauses Act, 1897 provides that sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and execution of Warrants for the levy of fines shall apply to all fines imposed under any act, Regulation, rule or bye-law unless the Act, Regulation, rule or bye-law contains an express provision to the contrary. The Collective Fines Ordinance, 1942 contains no provision precluding the application of the provisions of the Code of Criminal Procedure to fines imposed thereunder. Consequently the rules made by Government under sub-section (2) of section 386 of the Code of Criminal Procedure will apply to fines imposed under the Collective Fines Ordinance.

3. Question No.2:- The power to impose a collective fine can be exercised by Government or by any officer empowered in this behalf by the Provincial Govt. by general or special order. The power to apportion the fine among the inhabitants vests in the District Magistrate. There is no provision in the Ordinance empowering the District Magistrate to delegate his power to issue a warrant for the recovery of fine. Under Section 386(1), Criminal Procedure Code the power to issue a warrant for the recovery of fine vests in the court passing the sentence. On the same analogy the person who can issue the warrant for recovery of fine under the Ordinance, would be the District Magistrate. Consequently it appears that it would not be competent to the District Magistrate to delegate his power to issue demand notices

and warrants to any subordinate Magistrate.

Sd/- P.N.Koos
9/10

Remembrancer of Legal Affairs.

U.H. to H.D., (Spl), No.8223, dated the 9th October 1942.

Submitted for signature.

Id/-

R.L.A.

Submitted after issue with an index and for approval. File in O. Defence or India/42.

Id/-

S.A.S.

Id/-

D.S.

Id/-

S.I./5/5/56. 4c.

R.L.No.10291.
29.9.42.

Submitted.

2. By Govt. Circular, R.D., No.7556/39 dated the 1st Sep. 1942, specimen forms of agreement to be executed by the owners of properties requisitioned under the Defence of India Rules were forwarded to the Collectors for their guidance and they were requested to carry out requisite changes to suit particular cases. The Collector of Poona refers to the heading of the form at p.61 and states that he presumes that the agreement is in the sense of a legal quittance as between Govt and the party compensated and an estoppel against any other possible claim. He further states that the whole of the compensation amount is not arrived at by agreement but so far only as it relates to immoveable property and determined under section 19 of the Defence of India Act, whereas so far as relates to moveable property it is to be determined by the Collector in exercise of the powers delegated to him under Rule 75-A of the Defence of India Rules. The R.D. holds that the collector's presumption is correct but that the form of agreement at p.61 will have to be suitably amended in case of moveable property by omitting clause 3 and 4 and inserting a clause that the amount of compensation has been fixed by Govt/ or the Collector under the powers delegated to him under rule 75-A of the D. of I. rules. The papers are shown to the R.L.A for his advice.

3. The question for consideration are:

1). Whether the presumption made by the Collector of Poona in para 2 of his letter at pp.69-70 dated 9.9.42 is correct;

2). Whether the suggestion of the Secy R.D. to amend the agreement form at p.61 in case of moveable property in the manner stated in his note dated 26.9.42, is in order.

4. Question No.1:- The Collector has refered only to the first form of agreement viz., the form at p.61. From the office note underlying R.L.A's u.r. to R.D. No.5462 dated the 3rd July 1942, it is clear that when immoveable property is requisitioned under rule 75-A of the . or I. Rules, compensation in respect of that property should be determined under section 19 of the D. of I. Act. Determination of compensation for requisitioning moveable property does not fall either under section 19 of the D. or I. Act or rule 96 of the D. of I. Rules. Consequently, compensation for requisitioning moveable property under rule 75-A should be determined by Govt. under sub-rule(4) of Rule 75-A. The power of Government of Bombay under this rule has been delegated to the Collector by G.N.H.D., (Pol.war) No.S.D./W.1742, dated the 29th May 1942. The Collector can, therefore, determine the amount of compensation in such cases. As regards moveable property to be requisitioned under rule 75-A of the D. of I. Rules on the behalf of the central Govt. it is presumed that the Central Govt. has delegated similar powers to the Collector. The R.D. may verify this. By notification of the Govt. of India, D.C.D. No.1336/OR/1/42 dated the 25.4.42, the power of the Central Govt. regarding requisitioning of immoveable property with fixtures and furniture thereon has been delegated to the Collector. But that notn. does not refer to moveable property. Sec. 19(1) (a) of the D. of I. Act. only speaks of an agreement. A written agreement is the best piece of evidence that the parties have agreed to a certain amount. So that the parties may not go back on their words. Under the agreement the parties agree to certain payment and clause 5 of the agreement is in the form of an indemnity bond.

Office of the R.L.A.

The Collector's presumption that in the case of moveable property the Collector has power to determine the amount of compensation without the necessity of obtaining the payee's agreement regarding the amount is correct. The Form has been suitably amended for use in the requisition of moveable property. But R.D. may consider whether it is necessary to make the payee agree to accept the amount as payment in full and as barring any further claims and whether provision ought to be made in the form for arbitration in the case of moveable property. R.D. may consider whether in such a case the form ought not to be confined to a receipt for the money and an indemnity against payment to the wrong person.

F.N.Moos
10/10

Remembrancer of Legal Affairs.

U.R. to R.D., No.8260 dated 13th October 1942.

S.I./7/5/56. 4c.

Office of the R.L.A.

The question for consideration is whether Messers. Lakhmichand Sunderdas of Multan City, Punjab and Messers.Ramgopal Sarup of Okara, Punjab, the consignors of cotton railed to the City of Bombay without import licenses a required by G.O., G.D., No.23/4, dated 28th April 1942, can be successfully prosecuted under rule 81(4) of the Defence of India Rules.

2. By G.O., G.D., No.23/4, dated 28th April 1942, the Bombay Government has directed that no person shall move cotton into the City of Bombay by road, rail or sea except under a license granted by the persons specified i the Order. This Order is made under rule 81(2) (a) of the Defence of India Rules. The Order is a Provincial Order, the breach of which can only be ac tionable when committed in this Province. It is presumed that the consignor sent the cotton to Bombay under instructions of the consignee, Bruel & Co. The expression "Move into" as used in the Government Order appears to be wi enough to include both the consignor and consignee. But the expression use in the license issued under that Order is "import" and not "move into" which seems to suggest that the ban on the importation of cotton into Bomba refers to the importer. Section 23/(2) of the Indian Sale of Goods Act.193 provides that where, in pursuance of the contract the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to the buyer and does not reserve the right of disposal, he is deemed to have unconditionally appropriated the goods to the contract. This provision gives statutory recognition to an important principle viz. that where goods are delivered to a carrier for transmission to a buyer, the carrier is presumed to be the buyer's agent not only to take delivery but to assent to the appropriation to the contract of goods so delivered, subject of course to any just grounds of exemption which may be subsequently discovered (see Mulla's Sale of Goods Act, p.189) Consequently, in cases where the consignor of cotton does not reserve the right of disposal, as soon as cotton is consigned to the railway for transport the consignee becomes the owner of the cotton and would be deemed the importer thereof. But in cases where the consignor (Contd)

of cotton retains the right of disposal, he would be considered to be the importer. In the two cases under consideration it is presumed that the consignors of cotton did not retain any right of disposal. If that presumption be correct, the consignors would not be liable to a prosecution for breach of the Order. If the intention of Government were to require both the consignor and consignee to obtain a license, then the use of the word "import" in the license is likely to mislead business people; if any of them were prosecuted for the breach, the courts would be unwilling to convict, and if they did the sentence would be nominal.

Sd/- P.N.Moos. 9/10

Remembrancer of Legal Affairs.

U.R. to F.D.(supply), No.8214, dated the 9th October 1942.

Submitted after issue with an Index Card.

File in O.D. of I./42.

Id/-

S.I./7/5/56. 4c.

Submitted.

Attention is invited to the queries raised by the Secy. H.D. in his note dated 15.8.42 and to the F.D. notes. The question for the H.L.A's consideration is whether in view of the provisions of rule 45-B of the Defence of India Rules, the public utility undertakings are bound to keep their accounts on view for inspection by the share-holders at their general meeting as required by sec.131 of the Indian Companies Act. 1913.

2. Under sub-section (1) of Section 131 of the Indian Companies Act, 1913, the Directors of every Company shall at some date not later than eighteen months after the incorporation of the Company and subsequently once at least in every calendar year lay before the Company in general meeting a balance sheet and profit and loss accounts ..... made up to a date not earlier than the date of the meeting by more than nine months or in the case of a Company carrying on business of having interest outside British India by more than twelve months. Under subsection (3) the balance sheet and the profit and loss account or income and expenditure account shall be audited by the auditor of the Coy., and the auditor's report shall be attached thereto..... and the report shall be read before the Company in general meeting and shall be open to inspection by any member of the Copy. Under sub-sec.(3), every Company other than a private company shall send a copy of such balance sheet and profit and loss account or income and expenditure account so audited together with the auditor's report to the regis-

register address of every member of the Copy. at least fourteen days before the meeting at which it is laid before the meeting at which it is laid before the members of the company, and shall deposit a copy at the registered office of the company for inspection of the members of the company during a period of at least fourteen days before the meeting. The balance sheet and the profit and loss account shall include the particulars as described in section 132, and shall be authenticated as required by sect.133. Sub-section (3) of sect.133, however, provides that if any default is made in laying before the company or in issuing a balance sheet and profit and loss account or income and expenditure account as required by sect. 131, or if any balance sheet and profit and loss account or income expenditure account is issued, circulated or published which does not comply with the requirements laid down by and under sect.131, Sec.132, 132A and this section, the company and every officer of the company who is knowingly and willfully a party to the default shall be pubishable with fine which may extend to give hundred rupees.

3. But sub-rule (1) of rule 45-B of the Defence of India Rules provides that no person carrying on any undertaking to which this rule applies shall publish or permit to be published, copies of the accounts of that undertaking or any report or other document relating to the operation of that undertaking. Sub-rule (3) provides that the rule shall apply to

(i) all electricity supply undertakings,

(ii) All inland navigation, water transport, port, dock, harbour or pier undertakings.

From this rule it is evident that a person carrying on electricity supply undertakings is prohibited from publishing of permitting to be published copies of the accounts of that undertaking or report relating to the operation of that undertaking. The moment a document has been made known to another, then it is published (Dew V. Director of Public Prosecutions (1920) 89 L.J.K.B.p. 1166 at 1167) Laying before the company in general meeting the balance sheet and the profit and loss account of the income and expenditure account would not be a gratituous or a voluntary act on the part of the Directors of the Company, but it would be an act which has to be done in the course of business as required by section 131 read with section 133 (3) of the Indian Companies Act, 1913. If the contents or the balance sheet and the profit and loss account are laid before the company in the general meeting as required by section 131 it would amount to "publication" as the contents would thereby be communicated to all the members of the Coy. present at the meeting (of Emp.V.Sukhdeo I.L.R.55 all. p.253).

4. It is true that the provisions of rule 45-B (1) of the Defence of India Rules are not consistent with the provisions of sections 131, 132 and 133, but as enacted in section 3 of the Defence of India Act.1939, any rule made under section 2 shall have effect <u>notwithstanding anything inconsistent therewith contained in any enactement other than this Act.</u> Consequently, the provisions of rule 45-B will ... the provisions of

of section 131 of the Indian Companies Act. 1903. The second proviso to rule 45-B(1) specifically provides that the accounts, reports documents may be inspected at the office of the undertaking and any person who but for this direction would have been entitled to receive or inspect copies thereof and who shall have given to the undertaking notice in writing of his desire so to do not less than seven days previously. The words "entitled to receive or inspect" have in contemplation the provisions of sub-sectv(3) of section 131 of the Indian Companies Act. 1913. This proviso to rule 45-B (1) makes it clear that the public utility undertakings, like the electricity supply coy. are prohibited from laying before the general meeting the annual balance-sheets etc and they are not bound to follow the requirements of sections 131 et seq. of the Indian Companies Act, 1913.

Id/- E.P.Bhamgara
9/10

S.A.S.

I agree. Reply may be.

The view taken in the F.D. office note at p.5 ante is correct.

Id/- R.T.K.
7/10

A.L.R. I agree

Sd/- R.S.M.
8/10

R.L.A. Sd/- P.N.Koos
8/10

U.R. to F.D. No.8235 dated 10-10-42.

S.I./7/5/56. 4c.

Off:he of the R.L.A.

By Government Order No.4747/33, dated the 21st March 1942 issued under clause (a) of rule 81(2) of the Defence of India Rules Government has prohibited the removal of wheat, wheat flour or atta by road, rail or sea from any place, within the limits of the Province of Bombay except under a license. A similar order has been made on 26th March 1942 prohibiting the removal of rice, wheat, wheat flour or atta by road, rail or sea from any place within the limits of the City of Bombay and the Bombay Suburban District to any place in India outside the said City and District except under a license. The question raised for the consideration of the R.L.A. is whether these orders can be applied to or enforced in respect of goods carried coastwise, as carriage coastwise is specifically mentioned in rule 84(3) (1) and can presumbly be controlled only by notification or order issued by the Central Government under the latter rule.

2. It is true that rule 84(3) (1)of the Defence of India Rules provides for power of the Central Gov ernment to make an order controlling carriage coastwise of all goods or goods of any specified description; and if the carriage coastwise of goods is to be controlled an order under that provision would be necessary. But the orders issued by the Govt. or Bombay under clause (2) of rule 81(2) do not propose to control the carriage coastwise of rice, wheat, wheat flour or atta but only the removal thereof from any place within the limits of the City of Bombay and the Bombay Suburban District. Removal of goods from any place within the limits of the City of Bombay and the Bombay Suburban Dist. except under a license constitutes a breach of the orders irrespective of the question whether such goods are carried coastwise. Consequently the orders issued by the Government of Bombay under clause (a) of rule 81(2) are in no way affected by clause (1) of rule 84(3) of the Defence of India Rules and can be enforced in respect of those goods carried coastwise as soon as they are re-

removed from Bombay except under a license.

Sd/- P.N.Moos
25/10

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply), No.8661, dated the 26th October 1942.

S.I./7/5/46. 4c.

Office of the R.L.A.

It appears that rule 38B(2) of the Defence of India Rules does not contain provisions similar to clauses (d) and (e) of section 219(2) of the Bombay Municipal Boroughs Act, 1925. The question raised for the consideration of the Remembrancer of Legal Affairs is whether the amendment of rule 35B(2) of the defence of India Rules is necessary.

2. Rule 38B(2) of the Defence of India Rules provides; "when an order of supersession has been made under sub-rule (1)

(a) all the members of the local authority shall as from the date of supersession, vacate their offices as such members;

(b) all the powers and duties which may by or under any law for the time being in force, be exercised or performed by or on behalf of the local authority shall etc. be exercised and performed by such person or persons as the Provincial Government may direct. It is therefore clear that during the period of supersession under rule 38B all the powers and duries of a local authority are to be exercised by a person or persons appointed by Government. A Municipality is a body corporate having perpetual succession. Supersession of a Municipality merely means suspension and the Municipal Councillors holding office cease to function. But the Municipality having a corporate existence does not cease to exist, the management of its affairs, during the period of supersession, being provided for by the appointment of a person or persons selected by Government. Section 8 of the Bombay Municipal Boroughs Act, 1925 provides for power of a Municipality as a corporate body to sue and be sued. That section does not during the period of supersession, be in under section 219 or under rule 38B of the Defence of India Rules, remain in abeyance as presumed by G.D. The powers under section 8 can be exercised by a person or persons appointed under section 219 or rule 38B. It is true that rule 38B(2) does not contain provisions similar to clauses (d) and (e) of section 219(2) of the Bombay Municipal Boroughs Act. But those provisions do not appear to be really pertinent. Clause (d) provides for delegation of powers to any individual or to a committee or sub-committee; and under clause (e) when two or more persons are appointed under clause (b)

they may sue or be sued by any one of them who has been duly authorised to sue and be sued on behalf of the rest by a resolution duly passed by them in this behalf. The absence of similar provisions in rule 38B(2) can only imply that the person or persons appointed under rule 38B(1) cannot delegate his or their powers to any individual or to a committee or sub-committee and sue or be sued by any one of them. Section 179 of the Bombay District Municipal Act does not also contain any provisions similar to clauses (d) and (e) of section219(2) of the Bombay Municipal Boroughs Act and still no difficulty of the kind now anticipated was ever felt. Attention is invited to the R.L.A's openion No.2215, dated the 21st November 1922 where a similar point about the prosecution and defence of suits by or on behalf of a Municipality during the period of supersession under section 179 of the Bombay District Municipal Act has been considered. That opinion will apply in the present case also. There is therefore no necessity of amending rule 38B(2) of the Defence of India Rules. The view taken by G.D. is not correct.

Sd/- P.N.Moos
26/10

Remembrancer of Legal Affairs

U.R.to the G.D., No.8687, dated the 26th October 1942.

S.I/7/5/56. 4c.

Office of the R.L.A.

H.D. Order No.S.D.V-102, made under rule 56(1) of the Defence of India Rules, prohibits holding of public meetings, assemblies and processions in any place in the Province of Bombay except with the permission in writing of the District Magistrate of the district concerned or the Commissioner of Police, Bombay, as the case may be. Sub-rule (2), of rule 56 provides that for the purposes of sub-rule(1) any procession, meeting or assembly which is open to the public or to any class or portion of the public whether held in a public or private place shall be deemed to be a public procession, meeting or assembly as the case may be. The order thus is not confined to processions, assemblies or meetings held for political purposes, nor does it exclude those held solely for religious purposes. A Kirtan in a temple would therefore be a public assembly within the strict meaning of the Order provided it is open to the public or to any calss or portion of the public. If it is the ~~ex~~ intention to exclude religious discourses or church services from the operation of the order, the order will have to be suitably amended.

Sd/- P.N.Koos
27/10

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.) No.8730, dated the 28th October 1942.

S.I./7/5/56. 40.

Office of the R.L.A.

Messrs. M.L.Dhahanukar & Co., are the Managing Agents of (1) the Maharashtra Sugar Mills Co.Ltd., Belapur and (2) the Belvandi Sugar Farm Ltd., Belvandi. Prior to January 1942, these Mills used to sell their stock of sugar through their agent Mr.Kathod. In January and February 1942, however, Messrs. M.L.Dahanukar & Co. removed 7210 bags of sugar from the Maharashtra Sugar Mills and 1005 bags of sugar from the Belvandi Sugar Farmfor delivering to the Federal Trading Company and 44524 bags of sugar from the Maharashtra Sugar Mills for delivering to the Deccan Marketing Company; but these bags after removal were stored in godowns in the vicinity of the Belapur and Belvandi factories after payment of the excise duty. It appears that the Federal Trading Company and the Deccan Marketing Company were set up By Messrs.M.L.Dhahanukar & Co. shrotly before 19th January 1942 and neither is registered under the companies Act. After the Sugar Control Order was promulgated on 14 April 1942 and before it was superseded by the Sugar Control Order of 29th June 1942, the Federal Trading Company and the Deccan Marketing Company disposed of 13573 bags ~~by~~ from Belapur and the rate charged was Rs.38-11-6 ex Belapur. Of these 2075 bags were purchased by Lahoti Brothers of Sangamner and 4000 bags by Rambakas Mohanlal of Nasik who in turn sold them in big and ~~xxx~~ small lots to various merchants at prices higher than the maximum prices fixed by the Sugar Controller. It is alleged that the Federal Trading Company and the Deccan Marketing Company are bogus companies set up by Messrs. M.L.Dhahanukar & Co., for the purpose of evading the sugar control order of 14th April 1942 and also the payment of the higher rate of income tax and excess profit tax.

2. On these facts the question raised for the consideration of the R.L.A. are:-

(1) Whether any action can be taken in respect of the transfer of 44524 bags in the months of January and February 1942 to the Deccan Marketing Company by the Maharashtra Sugar Mills Co.,

(2) whether Messrs. Lahoti Brothers and Rambakas Mohanlal can be prosecuted; and

(3) whether any action can be taken against Messrs.M.L.

Dhabanukar & Co. and/or the Federal Co.

3. Question No.(1):- Clause 3 of the Sugar Control order of 14th April 1942 provides that no producer shall, after such date as the controller may notify in this behald, dispose of, or agree to dispose of, or in pursuance of any agreement entered into on or before such date make delivery or, any sugar, except (I) to a recognised dealer, or (ii) to a person specially authorised by the Controller to acquire sugar on behalf of the Central or Provincial Government. Clause 4 lays down that every recognised dealer shall comply with such directions regarding the sale or distribution of sugar as may be given to him by the controller. Clause 5 enacts that the Controller may, from time to time, fix the prices at which any sugars made in India may be sold exfactory. Where such prices have been fixed no producer shall sell or agree to sell sugar and no dealer or other shall purchase or agree to purchase sugar at a price higher than that fixed by the Controller; and no sugar shall be delivered by a producer or accepted by a purchaser in pursuance of an agreement entered into before the commencement of the Order which provides for the payment of a price higher than that fixed by the Controller unless the agreement is so revised as to substitute for the price originally agreed to the price fixed.

Now by his notification dated 14th April 1942, the Sugar Controller for India fixed that ex-factory prices of Sugar wherever produced and in his subsequent notification dated 23rd April the Sugar Controller for India notified 30th April 1942 as the date after which no producer shall dispose of any sugar except in the manner laid down in sub-clause (i) and (ii) of clause 3 of the Sugar Control Order. The Maximum wholesale prices for sugar were fixed on 10th June 1942 in Bombay City, on 28th May 1942 in Nasik, District and on 29th June 1942 in Ahmednagar Dist.

Before the Maharashtra Sugar Mills can be successfully prosecuted for breach of the Sugar Control Order it would be necessary to prove that the Maharashtra Sugar Mills disposed of sugar to an unrecognised dealer or an unauthorised person or at rates in excess of the fixed ex-factory rates. Even assuming that the Deccan Marketing

Company was a bogus company, it would still be necessary to establish that the sales were in contravention of the provisions of the Order. If, as the Director of Civil Supplies suggests, there is no evidence to prove how the sugar bags transferred to the Deccan Marketing Company were disposed of, it would be difficult to hold that there was a breach of the Sugar Control Order. Consequently no action can be taken with respect to the transfer of 44524 bags to the Deccan Marketing Company by the Maharashtra Sugar Mills. The view taken by the Director of Civil Supplies in his note dated 30.10.1942 appears to be correct.

4. Question No.(2):- Messrs. Lahoti Brothers and Rambakas Mohanlal would not be liable for having sold their stocks of sugar at more than the maximum prices fixed subsequently by the Sugar Controller. The view taken by the Director of Civil Supplies on this point is also correct.

5. Question No.(3):- It appears that the Federal Trading Company disposed of sugar to unrecognised dealers and unauthorised persons and at prices higher than the ex-factory prices after the Sugar Control Order of 14th April1942 came into force. To sustain a conviction for breach of the Order it would be necessary to prove that the Federal Trading Company is a bogus Company and its transactions were colourable transactions made on behalf of and for the benefit of the Maharashtra Sugar Mills, Ltd. and the Belvandi Sugar Farm Ltd. The Federal Trading Company appears to have come into existence at an opportune moment for the purpose of disposing of large quantities of sugar. It was started By Mr.Dhahanukar's son and worked under the guidance and on the advice of Mr. Dahanukar and his agent. It was not registered under the Companies Act. The sales were not effected by the Mills through their selling agent Mr.kathod, and the value of goods was not immediately paid to the Mills. After sale, the bags were stored in the godowns just outside the main factories instead of being removed elsewhere. These are facts and circumstances which raise a strong suspicion about the bona fides of the Federal Trading Company.

but they do not appear to be sufficient to prove beyond all reasonable doubt that the Federal Trading Compny was a bogus concern. Further investigation therefore appears necessary. The accounts of the Mills, Messrs. Dahanukar & Co., and the Federal Trading Company, are likely to throw more light on the point. Action can be taken for the purpose under clause (e) of rule 81 (2) of the Defence of India Rules; and ~~it~~ unless further evidence if forthcoming on closer investigation of the affairs of these companies, it would be difficult to establish a breach of the Sugar Control Order.

Sd/- P.N.Moos
6/11

Remembrancer of Legal Affairs.

U.R. to G.D., No.9034, Confl. dated 6th November 1942.

Submitted after issue. File in O.D. of I/42
Id/-

S.I./7/5/56. 4c.

Office of the R.L.A.

Attention of the G.D. is invited to the opinion given in the linked case. It is not clear whether a suit has been filed in this case, but it is possible that the matter is subjudice. It is therefore undesirable for the Rent Controller to express an opinion.

P.N.Moos
13/11

Remembrancer of Legal Affairs.

U.R. to G.D. No.9156, dated the 13th November 1942.

S.I./7/5/56. 4c.

R.L.No.11022/42

Submitted.

2. Please see F.D.(supply) note at p.9 ante. The Price Inspector, Dharwar, by virtue of the powers delegated to him under rule 81 of the Defence of India Rules by the District Magistrate gave a notice to the Southern Mahratta Urban Co-operative Credit Bank, Dharwar, to produce before him the accounts relating to the pledge of foodgrains by certain merchants at Dharwar. The Manager of the bank objects to production of these accounts on the grounds that if dealings by way of advancing loans to its clients on the security of the goods do not come within the meaning of the term "undertaking" as specified in rule 81. The D.C.P.Dharwar who was consulted is of the view that the objections raised by the Bank are not justifiable (p.7 ante). The question for the consideration of the R.L.A. is whether the Bank's dealings of advancing loans on the security of foodgrains to certian merchants amount to 'undertakings' within the meaning of rule 81 of the Defence of India Rules.

3. By H.D. (pol) War Notification No.S.D./3. 3401 dated the 19th December 1941 issued under section 2(5) of the Defence of India Act, 1939, the Government have delegated the powers and duties of the Provincial Government under rule 81 of the Defence of India Rules to the District Magistrates. The District Magistrates are also appointed Controllers of Prices in their respective districts under sections 2(5) by G.O.C.D. No.4747/33 dated the 22nd December 1941. Clause (e) of rule 81(2) of the Defence of India Rules provides that (Contd)

the Central or the Provincial Government so far as appears to it to be necessary or expedient for maintaining supplies and services essential to the life of the Community, may by order provide for requiring persons carrying on, or employed in connection with, any undertaking to produce to such authority as may be specified in the order any books, accounts or other documents relating to the undertaking. The expression "undertaking" means any undertaking by way of any trade or business (cf. Rule 81(1)). Business is an affair requiring attention and care; that which business or occupies one's time, attention and labour as his chief concern; mercantile pursuits; that which one does for a livelihood; occupation; employment. It is a word of large significance and in its broadest sense includes nearly all the affairs in which either an individual or a corporation can be actors (Iyer's Law Lexicon p.164). A co-operative bank transacting the business of advancing loans to its members on the hypothecation of their food-grains in their godowns would be an undertaking within the meaning of rule 81(2) (e) and the Price Inspectors who are presumbly authorised by an order under this rule are legally entitled to inspect accounts relating to pledging of food grains by the clients of the bank. The opinion expressed by the District Govt. Pleader, Dharwar at p.7 ante, appears, to be correct.

Id/- P.S.Madkarni
27/12

S.I./7/5/56. 4c.

Office of the R.L.A.

The expression "undertaking" as defined in rule 81(1) of the Defence of India Rules means any undertaking by way of any trade or business. "Trade" implies business carried on for profit and the expression "business" connotes that which occupies time, attention and labour of men for the purpose of livelihood or profit. It is thus clear that an undertaking would come within the purview of rule 81 if it is conducted for the purpose of profit or livelihood (see R.L.A's U.R. to H.D. (Spl.) - A.R.P., No.5357, dated 1st July 1942. The Southern Maratha Co-operative Credit Bank, Dharwar, in the course of its business advances money on the security of goods for the purpose of profit. Consequently it is an undertaking within the meaning of rule 81(1) of the Defence of India Rules.

Sd/- P.N.Woods
13/11

Remembrancer of Legal Affairs.

U.R. to F.D. (Supply) No.9148, dated the 13th November 1942.

Submitted., after issue with an Index Card.
File in D.Def. of India/42.

Id/-

S.I./7/5/56. 40.

Office of the R.L.A.

The questions for the consideration of the R.L.A. are as follows:-

(1) Whether the Bombay Storage Accommodation Rent Restriction Order, 1942, applies only if the premises are used solely for storage and ancillary purposes and not to premises used for business purposes;

(2) Whether under the Bombay Storage Accommodation Rent Restriction Order, 1942, the Honorary Rent Controller's powers are confined to cases falling within the scope of clause 9; and

(3) whether it is competent for the Honorary Rent Controller to express opinion that the said Order is applicable to a particular building or not.

2. The Bombay Storage Accommodation Rent Restriction Order 1942 is made in pursuance of the powers conferred by clause (ba) of sub-rule (2) of rule 81 of the Defence of India Rules on the Provincial Government for regulating the hiring of "Storage accommodation". The expression "Storage accommodation" does not appear to have been defined. Giving the expression its ordinary meaning, it would mean the space for the safe keeping of goods such as a warehouse, godown or other depository. Clause 2 of the Order provides that it shall apply to the premises used or intended to be used for storage of goods and for ancillary purposes. The term "premises" as defined in sub-clause (3) of clause 3 means any building or part of a building, let or intend to be let for the purpose of storage of goods etc. Thus from clauses 2 and 3(3) read together, it would be clear that order is intended to apply to a building or part of a building which is used or intended to be used for the purpose of storage of goods and ancillary purposes. It would not be applicable to premises where business is carried on. Merely because some goods are stored in business premises, that place cannot be regarded as being used for the purposes of "storage of goods". The main object is not to store the goods, but to keep the goods for carrying on the business. The view expressed by the D.S., G.D. on this point appears to be correct. As regards the second question, the order

is applicable to premises used or intended to be used for the storage of goods and for ancillary purposes. When, therefore, any case is referred to the Controller for determining the "standard rent" of any premises, he will first have to ascertain whether the premises in question are used or intended to be used for storage of goods and for ancillary purposes within the meaning of clause 2. If on facts he reaches the conclusion that the premises are so used, he may proceed to fix the "standard rent" under clause 9 read with clause 3(4) (d) of the Order. If the premises do not fall within the scope of clause 2, he may inform the party accordingly and desist from taking action under clause 9. In such cases the Controller's decision on the question whether the premises fall within the scope of clause 2, is more than an expression opinion. It is a decision which binds the parties until it is reversed in appeal or set aside by a competent civil court. It appears a matter of some doubt whether the civil courts would have jurisdiction in such cases but that question does not arise here. The question now seems to be whether the Controller can express an opinion in cases where he is not asked to fix the standard rent under clause 9 but merely to aid parties by expressing an opinion. In such cases the order does not empower him to express an opinion whether or not the order applies to particular premises; if he expresses an opinion on the point, it has no greater force in law than a similar opinion expressed by any private individual.

Sd/- P.N.Moos.
13/11

Remembrancer of Legal Affairs.

U.R. to G.D., No.9155, dated the 13th November 1942.

S.I./7/5/56. 4c.

L a n d s.

Requisitioning and acquisition of properties under Defence of India Rules. Forms of agreement for compensation paid for,

GOVERNMENT OF BOMBAY.
Revenue Department.
Circular Memorandum, No.7556/39,
Bombay Castle, 1st September 1942.

Circular Memorandum.

The accompanying specimen forms of agreement to be executed by the owners of properties requisitioned under the Defence of India Rules are forwarded to the Collectors for information and guidance with reference to Government Resolution, No.7556/39-III-Confdl., dated 7th August 1942. The forms are intended to afford guidance to the Collector who may carry out requisite changes to suit particular cases in consultation with the local Government Pleader, if necessary.

2. Collectors are advised that in view of the need for economy, copies of the specimen forms should be cyclostyled or printed locally, if necessary, according to their minimum requirements.

By order of the Governor of Bombay.

Sd/- M.J.Desai,
Secretary to Government.

To,

The Commissioner of Divisions,
All Collectors,
The Collector of Bombay (Land Revenue Depart.)
The Accountant General,
The Finance Department,
The Public Works Department,
The Home Department (Political) War,
The General Department (with a copy of Government Resolution, No.7556/39-III, Confl., dated the 7th August 1942.)

Accompaniment..

S.I./7/5/56. 4c.

Office of the R.L.A.

The question for consideration is whether a licensee who makes false statements in his application for a license under clause 5 of the Bombay Retail Trade Control and Licensing Order, 1942, can be successfully prosecuted.

2. Clause 5 of the Bombay Retail Trade Control and Licensing Order, 1942, made under sub-rule (2) of rule 81 of the Defence of India Rules provides that applications for licenses under this Order shall be made in Form B to the officer authorised to issue licenses under clause3. Form B requires the applicant to state whether or not he had previously applied for such license. Rule 117 of the Defence of India Rules provides that if any person -

(i) when required by or under any of these Rules to make any statement or furnish any information, makes any statement or furnishes any information which he knows or has reasonable cause to believe to be false, or not true, in any material particular, or

(ii) makes any such statement as aforesaid in any account, declaration estimate, return or other document, which he is required by or under any of these Rules to furnish, he shall be pubishable with imprisonment etc.

It appears therefore that if a person having already obtained a license under the Bombay Retail Trade Control and Licensing Order again applies in Form B. for another license stating that he did not previously apply or obtain a license, he can be deemed to have made a false statement or furnished false information and would be liable to be prosecuted under rule 117.

Sd/- P.N.Wood
18/11

Remembrancer of Legal Affairs.

U.R. to Food Controller, No.9319, dated the 19th Nov. 1942.

S.I./7/5/56. 4c.

Submitted.

Attention is invited to note of A(F) dated 14.11.42 in which he directs that an independent Order regulating rents of stables,cattle-sheds, cattle-yards and garages should be drafted under the Defence of India Rules. The G.D. has accordingly prepared a draft Order stayled as "The Stables, Cattle-Sheds, Cattle-Yards and Garages Rent Restriction Order." Under clause 2 of the draft Order, the provisions of the Order are intended to be made applicable to premises used or intended to be used for stabling cattle, for cattle sheds, cattle yards and garages (vide also clause 3(3)).

2. The question for consideration of the R.L.A. is whether it is legally competent for the Provincial Government to Issue, under the Defence of India Rules, an order restricting the rents of stables, cattle sheds, cattle yards and garages.

3. Under clause (ba) of sub-rule (2) of rule 81 of the Defence of India Rules, the Central Govt. or the Provincial Govt. so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community may by order provide for regulating the hiring of storage accommodation in any area, and in particular

(i) for controlling the rates at which such accommodation may be hired and the charges which may be made for any services rendered in connection therewith;

(ii) for requiring such accommodation to be hired, either generally or to specified persons or classes of persons, or in specified circumstances;

(iii) for preventing the unreasonable eviction from such accommodation of persons who have hired it.

It pursuance of the powers under clause (ba) of sub-rule (2) of rule 81, the Provincial Government has made the "Bombay Storage Accommodation Rent Restriction Order, 1942" for regulating the hiring of storage accommodation and for ancillary purposes. The expression "storage accommodation" as used in rule 81(2) (ba) has not been defined. Giving the expression its ordinary meaning, it would mean the space for the safe-keeping of goods such as a warehouse, godown or other depository (see R.L.A's opinion No.9155, dated 13-11-42). The provisions of clause (ba) cannot, however, be attracted for making an order for regulating the hiring of stables, cattle-sheds, cattle-yards, and garages, as they do nor fall within the meaning of the expression "Storage accommodation".

4. Under clause (bb) of sub-rule (2) of rule 81 the Provincial Government may by order provide for regulating the letting and sub-letting in any area of residential accommodation and whether with or without the board, and in particular:-

(i) for controlling the rents for such accommodation;

(ii) for preventing the unreasonable eviction of tenants and sub-tenants from such accommodation, and

(iii) for requiring such accommodation to be left either generally, or to specified persons or classes of persons, or in specified circumstances.

In pursuance of power vested under section 81(2) (bb), the Provincial Govt. has already made two orders -- (i) the Bombay Rent Restriction Order, 1942, and (ii) the Hotels and Lodging Houses Control Order, 1942. As the draft Order in question aims at regulating the hiring of stables, cattle-sheds, garages, etc. and controlling the rents at which such accommodation

may be hired, and does not pertain to "residential accommodation", it would fall outside the scope of clause (bb) of rule 81(2). In the absence of any specific provision in rule 81 such an order cannot be made under that rule. There does not appear any other provision in the Defence of India rules under which such an order could be made. The only course is to amend rule 81 for taking power to the Provincial Government to make such an order.

Id/- E.F.Bhamgara
20/11

S.A.S.

I agree. Reply may be:-

The Defence of India Rules contain no provision empowering Government to control the rents of stables. Cattle-sheds, Cattle Yards and Garages.

Id/- R.T.K.
20/11

A.L.R.

I agree.

Id/- R.S.H.
21/11

R.L.A. Sd/- P.N.Koos
23/11

U.R. to G.D. No.9415 dated/~~xxxx~~ 24-11-42.

S.I./7/5/56. 4c.

No.5883-B/39,
Revenue Department.
Bombay Castle, 23rd November 1942.

From,

M.J.Desai, Esquire, I.C.S.,
Secretary to the Government of Bombay,
Revenue Department;

To,

The Municipal Commissioner for the City of Bombay.

Subject:- Lands and Buildings.
Requisitioning of -- under Defence of India Rules.
Question regarding repairs to buildings.

Sir,

I am directed to invite your attention to Government letter No.5883-B/39, dated 10th July 1942, and to state that on further consideration, Government has decided that the last sentence of that letter should be deleted and the following inserted inits place:-

"There is, however, no objection to the owner having access to the building to carry out current repairs to the property at his cost. In cases in which the owner fails to carry out the current repairs, the requisitioning authority will carry out current repairs and move the Collector to take this factor into consideration and, if necessary, revise his order fixing the amount of compensation inconsultation with the Executive Engineer or ~~x~~ any other expert officer of Government".

Yours obedient servant,

Sd/- R.K.Doshi,
for Secretary to the Government of Bombay,
Revenue Department.

Copies.....

Copies forwarded to:-

The Commissioners of Divisions,
All Collectors,
The Collector of Bombay (Land Revenue Dept.)
The Remembrancer of Legal Affairs,
The Home Department (Political) War,
The Home Department (A.R.P.)
*The public Works Dept.
*The Finance Department (Supplies),
*The General Department.

* with copies of Government letter,
No.5883-B/39, dated 10th July 1942.

Submitted with pps. (O.Def.of India

The necessary correction has been carried out in Govt. letter dated 10.7.42. File.

Id/-

S.I./7/5/56- 4c.

Office of the R.L.A.

The question raised for the consideration of the Remembrancer of Legal Affairs is whether any order can be issued by Government under the Defence of India Rules providing for the levy of a surcharge on the present tariff without amending the licenses issued under the Indian Electricity Act, 1910.

2. Sub-rule (2) (b) of rule 981 of the Defence of India Rules provides that the Central Government or the Provincial Government, in so far as it appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, may by order provide for controlling the prices or rates at which articles or things of any description whatsoever may be sold or hired and for relaxing any maximum or minimum limits otherwise imposed on such prices or rates. The Provincial Government has power under this rule to make an order relaxing the maxima rates of electricity prescribed in the license and the order would have effect notwithstanding the provisions of the Indian Electricity Act.(see section 3 of the Defence of India Act); but an order under this rule will be a general one applying to all companies. Such an order does not appear to be necessary in the case of all the electric companies for the maintenance of the supply of electricity, as justification for the surcharge would differ with different companies. Moreover the Indian Electricity Act already provides a remedy for amendment of Licenses. Consequently an order under the Defence of India Rules would hardly be proper or appropriate.

Sd/- P.N.Kaul
15/10

Remembrancer of Legal Affairs.

U.R. to P.W.D., No.8359, dated the 15th October 1942.

Office of the R.L.A.

The R.L.A. is asked to express his opinion on the proposal which the Secretary, R.D. has made in his note dated the 28th October 1942. Briefly, the proposal is that Government should deduct from the amount of compensation to be paid for lands requisitioned under rule 75-A of the Defence of India Rules, the amount due to Government as land tax, delaying for this purpose, when necessary, the payment of the compensation amount. If the land tax and the compensation amount are both due there seems to be no legal objection in deducting the land tax before payment of the compensation amount. If, however, the compensation amount is due for payment while the land tax is not yet due, there would seem to be a legal objection in delaying payment of even part of the compensation amount If the compensation amount is due, payment is legally enforceable in the court of law. The legal objection to the proposal is that despite Government orders to the contrary, a party might go to court and obtain payment of the full amount. But it is very unlikely in practice that there would be any such hindrance to the working of the scheme. In those cases where payment is to be made 'per quarter' or 'per half' year, the payment of the land tax could be adjusted on the second or later instalment. Although therefore there is a legal objection to the proposal, it is doubtful whether in practice there would be any real substance in the objection.

2. It is by no means clear when the payment of compensation amount does become due or legally enforceable. The specimen agreement form included in the file is silent on that point. So also is section 19 of the Defence of India Act, 1939. Under the land Acquisition Act it seems that payment becomes legally enforceable when the Collector makes his award. By analogy payment of the first instalment of the compensation money seems to become due when the amount of compensation is determined either by agreement or by arbitration.

But it seems unnecessary to consider this point deeply for the present purpose.

Sd/- P.N.Moos
8/12

Remembrancer of Legal Affairs

U.R. to R.D., No.9824, dated the 9th December 1942

S.I./7/5/56. 4c.

Submitted.

By clause 2 of G.O.G.D., No.3686/xx dated 12.6.42, made in exercise of the pow confered by sub-rule (1) of rule 40 of the defence of India Rules, it is directed that a person having in his possession a map depicting any part of India on a scale of thirty-two miles or less to an inch shall deliver it immediately to the officer in charge of the nearest police station unless he has obtained the permission of Govt. to retain possession of the same. A press note to this effect was also published. The Secretary of the Property Owner's Association States with reference to that press note that the description of the maps referred to in the Govt. Order is so broad that the expression "map depicting any part of India on a scale of thirty two miles or less to an inch" may cover plans of building constructions prepared by architects and attached to documents (e.g.sale deeds, leases etc.). The scale in such plans is many times one inch to a certain number of feet. The Dy. Secy. G.R. considers that technically such plans will come within the purview of the said order and has raised for the consideration of the R. L.A. the question whether Govt. can by special order under clause 2 of the said order dated 12.6.42 grant general permission for all owners of such plans to retain them; or whether it is necessary to amend the said order to that effect.

3. Two questions arise in this case. First, whether the plans referred to in the letter at p.1 ante are maps depicting any part of India; and secondly if so, whether,

a general permission can be granted for all owners of such plans to retain them under clause 2 of the order dated 12.6.42. What is prohibited by G.O.C.D. No.3686/33. dated 12.6.42 is the possession of maps depicting any part of India on a scale of thirty two miles or less to an inch as such maps contain information likely to assist the enemy. The word 'map' according to the Oxford Dictionary means a representation on paper etc. of (part of) the earth's surface, showing physical and political features etc. The Law Lexicon interprets 'map' as a drawing upon a plain surface representing a part of the earth's surface and the relative position of objects thereon. The essence of a map therefore is the delineation of a part of the earth or a country with its various towns, rivers; mountains etc. In the case of a map of a particular town, its various streets, important places, buildings, railway stations etc. may have to be depicted. In this view though a plan of a particular piece of land upon which a building is to be constructed may show a part of the country, it cannot be called a map.

S.I./7/5/56. 4c.

Office of the R.L.A.

The word "map" as understood in common parlance means "a representation on paper etc. of (part of) the earth's surface, showing physical and political features etc. "(Concise Oxford Dictionary). For legal purposes, the word seems sufficiently distinguished from "charts" or "plans"; cf. sections 36 and 83 of the Evidence Act. There appears no objection to following the course suggested in paragraph 3 of H.D. note at p.7 ante. As regards feasibility of action under clause 2 of Government Order, General Department, No.3686/33, dated the 12th June 1943, no general order permitting retention of plans by the owners concerned can be issued. Amending the Order itself and defining "maps" as excluding plans of any specified description or generally is also a course free from legal objection.

Sd/- P.N.Roos
17/12

Remembrancer of Legal Affairs.

U.R. to the C.D., No.10102, dated the 18th December 1942.

S.I./7/5/56. 4c.

Submitted.

The question for the consideration of the R.L.A. is whether the report about notice of strike in the twenty Mills in the BOMBAY City published in the issue of the Janmabhumi dated 19.11.42 at p.5A of the linked case falls within the scope of clause (g) or (k) of sub rule (6) of rule 34 of the Defence of India Rules or section 4(1) of the Indian Press (Emergency Powers) Act, 1931.

2. The headlines are as follows:-

"Growing dissatisfaction among the Mill Workers.

Notice of strike by Mill workers of about twenty Mills.

On one hand on account of the rise in prices and on the other hand the lukewarm attitude of the Mill-owners getting abnormal profits, there is spreading discontent among the Mill workers for some time. In this connection they had made petitions to the Mill-Owners and to Govt. but they did not receive reply from either of them. On account of this, the Mill-workers have lost their patience, and therefore, the workers in about twenty Mills in the City have given notices to the authorities stating that the dearness allowance which they receive at present is insufficient and demanding an increase both in the allowances as well as salary and intimating that if their demands were not satisfied they would go on strike.

The four main demands of the workers.

As the effortsfor compromise made by the Girni Kamgar Union (Red Flag) did not meet with any reply, the Mill workers have resorted to this method.

It is said that the principal demands of the workers are as follows:-

"(1) As the dearness allowance given to them is insufficient, there should be an increase in the same;

(2) About grain shops -- the Number of grain shops conducted by the Mills is not sufficient and consequently they should be some increase in their number and there should be representative of the voters;

(3) There should be an increase of 25 p.c. in pay;

(4) The workers should get bonus.

The workers threaten to go on strike if the authorities do not give proper attention to their demands."

3. The expression "prejudicial act" as defined in sub-rule (6) of rule 34 of the Defence of India Rules, means inter alia any act which is intended or is likely to cause fear or alarm to the public or to any section or the public (vide clause (g)), to influence the conduct or attitude of the public or of any section of the public in a manner likely to be prejudicial to the defence of British India to the efficient prosecution of WAR.(vide Cl.(k)). From the letter of the Commr. of Police, Bombay, dated 13.11.42, it would appear that the information is based on rumours which do not exist. Though the demands about increase in dearness allowance and in pay do not exist at present nor any such notice is given and the atmosphere in the Mill area is quiet, these sorts of rumours may tend to excite dissatisfaction and create discontent among the workers and the result may be that the workers being led away by such rumours may actually serve notice of strike on the Mill-Owners.

Office of the R.L.A.

The report published in the Janmabhumi is based on ill-founded rumours. Though it is potentially mischievious it does not appear very probable or likely that it would have the effect of causing discontentment amongst the workers and inciting them to go on strike. The employers and workers' unions are capable of tackling a situation arising from mischievous rumours and the whole machinery of negotiation provided by law would come into operation before a strike can take place. The possibility of the efficient prosecution or the war being prejudicial by such unfounded rumours is too remote to permit of action under clause (k) or any other clause of rule 34(6) of the Defence of India Rules; nor is the report strong enough to attract any of the provisions of section 4(1) of the Indian Press (Emergency Powers) Act.

Sd/- P.N.Pai 16/12

Remembrancer of Legal Affairs.

U.H. to H.D., (Spl.), No.10060, dated the 16th December 1942.

S.I./8/5/56. 4c.

The question for the consideration of the R.L.A. is whether under second proviso is to clause 3 of the Foodgrains Control Order 1942, read with para 5 of Form A thereto, a person not holding a wholesale licence can be authorised by Govt. or an officer authorised by Govt to purchase foodgrains in wholesale quantities.

2. Clause 3 of the Foodgrains Control Order, 1942, provides that no person shall engage in any undertaking which involves the purchase, sale or storage for sale, in wholesale quantities of any foodgrains except under and in accordance with a licence issued in that behalf by the Provl. Govt. or by an Officer authorised by the Provl. Govt. in this behalf. Under the second proviso to the said clause, the Provl. Govt. or an officer a authorised by the Provl. Govt. in this behalf may, by a special or general order exempt, subject to such conditions as may be specified in the order, a purchaser other than a retail dealer from the operation of this clause. Under para-5 of Form A the licensee shall not in any one transaction sell any of the food grains mentioned in para.1, in quantities exceeding 20 maunds, to any person who does not hold a licence under the Foodgrains Control Order, nor is otherwise authorised to purchase the foodgrain in wholesale quantities. All these provisions read together make it clear that the Provl. Govt. or an officer authorised by the Provl. Govt. in this behalf may issue a special or general order, exempting a purchaser from taking out a license under clause 3 of the Foodgrains

Control Order, 1942, and subject to such conditions as may be specified in the order, authorised such purchaser to purchase the foodgrains in wholesale quantities. The answer to the question [redacted] appears to be in the affirmative.

Id/- E.B.Bhamgara.
16/11

S.A.S.

I agree.

Replymay be:-

The view taken by the F.C.

at pp.2 & 3 ante is correct.

Id/- R.T.K.
17/11

A.L.R.

I agree

Id/- R.S.M.
18/12

R.L.A.

Id/- P.N.Moos
19/12

U.R. to F.C. No.10162 dated 22-12-42.

S.I./8/5/56. 4c.

12259/7-12-42.

Submitted, with the reference to Secretary H.D's note dated the 2nd instant at page 2 ante.

2. The proposal made by the Municipal Commissioner is that a rule may be made under the Defence of India Act, 1939, making it obligatory on persons who have erected shelters, blast walls etc. under any order made under rule 51-1 of the Defence of India Rules to remove them within a specified time after the cessation of hostilities. The question raised for the consideration of the R.L.A. is whether the necessary rule can be made under the Defence of India Act, 1939.

3. The Defence of India Act, 1939, is a temporary Act. The preamble of a statute has been said to be a good means of finding out its meaning, and, as it were, a key to the understanding of it (see Maxwell, 8th Edition, p.40). It will be seen from the preamble of the Defence of India Act that the Act has been enacted inter alia to provide for special measures to ensure the public safety and interest and the defence of British India during the present grave emergency whereby the security of India is threatened by war. The power of making rules is conferred by section 2 of the Act. The rules are to be made by the Central Government for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of community. It is true that by virtue of the provisions of section 3, any rule made under section 2 and any order m under any such rule, shall

shall have effect not withstanding anything inconsistent therewith contained in any enactment other than that Act or in any instrument having effect by virtue of any enactment other than that Act. But after the cessation of hostilities there would be no question of securing the defence of British India, the public safety etc. and it would not be competent to make any rule under section 2 casting obligation on persons to remove shelters etc. after the cessation or hostilities, even though under section 1(4) the Act remains in force for 6 months thereafter. Such a rule would be outside the scope of the Act. (cf. R.L.A's opinion No.8100 dated the 6th October 1942).

4. In the absence of any special provision to the contrary, after the Act has expired no proceedings can be taken upon it and it will cease to have any further effect (see Craies, 4th Edition p.347). If the shelters etc. contravene municipal building by-laws and regulations, action can then be taken for their removal in accordance with the provisions of such by-laws and regulations. If it is desired to make it obligatory on persons who have erected shelters to remove them after cessation of hostilities special legislation will have to be undertaken for the purpose. The View taken by U.S.H.D., is therefore correct.

Id/- M.D.
10/12

S.I./8/5/56. 4c.

Submitted, with the reference to Secretary H.D's note dated the 2nd instant at page 2 ante.

2. The proposal made by the Municipal Commissioner is that a rule may be made under the Defence of India Act, 1939, making it obligatory on persons who have erected shelters, blast walls etc. under any order made under rule 51-1 of the Defence of India Rules to remove them within a specified time after the cessation of hostilities. The question raised for the consideration of the R.L.A. is whether the necessary rule can be made under the Defence of India Act, 1939.

3. The Defence of India Act, 1939, is a temporary Act. The preamble of a statute has been said to be a good means of finding out its meaning, and, as it were, a key to the understanding of it (see Maxwell, 8th Edition, p.40). It will be seen from the preamble of the Defence of India Act that the Act has been enacted inter alia to provide for special measures to ensure the public safety and interest and the defence of British India during the present grave emergency whereby the security of India is threatened by war. The power of making rules is conferred by section 2 of the Act. The rules are to be made by the Central Government for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of community. It is true that by virtue of the provisions of section 3, any rule made under section 2 and any order made under any such rule, shall

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Attention is invited to R.L.A's opinion No.8100 dated 6th October 1942. As pointed out in that opinion the preamble to the Defence of India Act, 1939, indicates that the Act is enacted on account of the grave emergency which exists whereby the security of India is threatened by war and which renders it necessary to provide for special measures to ensure the public safety and interest and the defence of British India. Section 2 of the Act which gives power to the Central Government to make rules provides that the rules shall be such as appear to the Government to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community. Rules under section 2 can therefore be made for securing any one of the objects specified therein during the existing emergency. After hostilities cease there is no question of securing public safety etc. and therefore any rule which requires the doing of a thing after the cessation of hostilities will not be covered by the provisions of section 2 even if such a rule is made in the interests of public safety. The proposed rule is intended to make it obligatory on the persons who have erected shelters, blast walls, to remove them after hostilities cease. It will not therefore be covered by the provisions of section 2 of the Act; it will be ultra vires of the Act.

Sd/- P.N.Moos.
27/12

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl). A.R.P., No.10160, dated 22nd Dec.1942.

S.I./8/5/56. 4c.

Office of the R.L.A.

The question for consideration is whether the provisions of the Defence of India Rules can be invoked for prohibiting or restricting sugarcanes cultivation on irrigated lands and compelling the owners thereof to grow food and fodder crops instead.

2. The only relevant provisions of the Defence of India Rules appear to be rules 78(3) and 81(2) (a). Rule 78(3) provides inter alia that if in the opinion of the Central or Provincial Government it is necessary or expedient to maintain supplies essential to the life of the community that Government may by order provide for prohibiting or restricting the doing on any particular land of any such work as may be specified in the order. "The doing of work on land" has not been defined. But it would appear from sub-rules (1) and (2) that this expression did not contemplate the inclusion of the work of growing crops within the scope of its meaning. Assuming that it did and work on land is given a wide and liberal interpretation so as to include work in connection with agriculture, even so Government can at best prohibit or restrict sugarcane plantation but cannot compell the holders to grow any other particular kind of crop instead. It is true that under the provisions of rule 81(2) (a) the Central or Provincial Government so far as appears to it to be necessary or expedient for maintaining supplies essential to the life of the community may by order provide for regulating the production of articles or things of any description whatsoever. But here again the expression "production of articles or things" does not appear to have been used with reference to the growing of crops. Further it is very doubtful if the power to regulate production includes the power to order any particular crop to be raised. Rule 81, as the marginal note indicates, was intended for the purpose of general control of industry etc. and not for agriculture. I am fortified in this view by the fact that when rules 78 and 81 were framed the Central

Central Government had no power under the Defence of India Act to frame rules providing for the control of agriculture. This power was taken on 5th September 1942 when section (2) (xx) of the Defence of India Act was amended by Ordinance No.XLVIII of 1942. This amendment has not been given retrospective effect and consequently it does not appear feasible for Government in the exercise of their power to control agriculture to resort to rule 78 and 81 for the purpose of compelling cultivators to grow food and fodder crops instead of sugarcane. In the circumstances, in order to achieve the object in view, it would be safer to approach the Government of India to frame a new rule or to amend the existing rules. Such an order or rule would by virtue of section 3 of the Defence of India Act over ride the provisions of any agreement which Government may have entered into with the cultivators or landholders.

Sd/- P.N.Wood
10/12

Remembrancer of Legal Affairs.

U.R. to R.D., No.9867, dated the 10th December 1942.

R.S.H.

For further opinion please see R.L.A's note to P.W.D. No.10135, dated the 21.12.42.

Id/- R.S.H.

S.I./8/5/56. 40.

R.L.No.12490, dated12.12.42.

Submitted.

2. The P.W.D. has referred these papers to the R.L.A. with reference to para.5 of A(F)'s note dated 4.12.42 at p.2 ante and para.7 of S.E., D.I.C's note dated 10.12. at p.4 ante. R.L.A. has already expressed his opinion on para.5 of A(F)'s note in his U.R. to R.D. No.9887, dated the 10th December 1942. The Superintending Engineer, D.I.C. in para.7 of his note suggests that even where planta tion of sugarcane has to be allowed in accordance with the existing block and other permits, Bagaitdars can be made to surrender one-third of their cane-permit and delay their plantation ~~ex~~ till the commencement of the next monsoon. According to the Superintending Engineer's suggestion water so saved can be utilized for growing food and fodder crops in hot weather. The Secy., P.W.D. states that this suggestion will need legal action under the D. of I. Act if it cannot be done under the Bombay Irrigation Act. The R.L.A. is requested to advise on this point.

3. Water is supplied to the irrigators under the provisions of Part IV of the Bombay Irrigation Act, 1879. The irrigators have to make a written application for supply of water under section 27 thereof. These applications are sanctioned or rejected by the Executive Engineer under Rule 8 of the Bombay Canal Rules, 1934. Section 28 provides that the supply of water to any person entitled to such supply shall not be stopped except in the circumstances mentioned in clauses (a) to (f) of that section. Under clause (c), supply can be stopped whenever and so long as it is

necessary to do so in order to supply in rotation the legistimate demands of other persons entitled to water. In practice, it is for the officer in charge to say whether he can take advantage of this section by stopping water for sugar cane plantation in order to make it available for hot weather grain and fodder crop. Rule 10 of the Bombay Canal Rules provides that if from any cause, any water supply is insufficient to meet all demands for water from such supply, questions regarding the allotment of the available supply and the quantity and regulation thereof, shall, subject to the general or special orders of Govt. be determinedby the Executive Engineer. It appears that Govt. can pass orders under this Rule to limit supply of water to sugar cane crop. The conditions at the back of the application forms also show that in certain circumstances if water is not available Govt. can curtail the supply in respect of certain crops. As regards the D. of I. Rules, R.L.A. has advised that instead of resorting to Rules 78 and 81 of the D. of I. Rules for the purpose of compelling cultivators to grow food and fodder crops instead of sugar cane, it would be safer to approach G. of I. to frame a new rule or amend the existing D. of I. Rules. In view of the existing contracts with the cultivators and the provision of section 3 of the D. of I. Act, it would be advisable to get the D. of I. Rules amended instead of taking action under the Bombay Irrigation Act, to avoid any complications in individual cases.

I.D/- S.R.Potnis
14/12

S.A.S.

It appears that the P.W.D. has not seen the R.L.A's last opinion No.9887, dated 10.12.1942.

2. As regards the first question raised in para.5 of A(F)'s note the attention of the P.W.D. may be invited to the R.L.A's opinion No,9887, dated 10.12.1942 a copy of which may be forwarded to it.

S.I./8/5/56. 4c.

3. The second question raised for consideration is whether, where plantation has been allowed in accordance with the existing block and other permits, the Bagaitdars can be made to surrender one-third of their cane permit and delay their plantation till the commencement of the next monsoon so that water so saved can be utilised for growing food or fodder crops in the hot weather.

4. Water is supplied to irrigators under the previsions of Part IV of the Bombay Irrigation Act, 1879 and the rules thereunder. Under section 27 in Part IV every person desiring to have a supply of water from a canal should submit a written application to that effect to a canal officer duly empowered to receive such applications in such form as shall from time to time be prescribed by the Provincial Govt. in this behalf. Sub-rule (3) of rule 4 of the Bombay Canal Rules, 1934 provides that every application for a supply of water for the purpose of irrigation shall be made in the case of two season blocks in Form I and in the case of sugarcane blocks in Form II or Form III according as sugarcane are permitted to be grown in the block is to be limited to 1/3rd of 1/4th of the block area. Conditions subject to which the applicationsin Forms II and III can be sanctioned are printed therein; but none of them empower the irrigation authority to compel the irrigators to surrender any part of their permit i.e. to forego any part of the supply as is sanctioned under rule 8. Section 28 provides that the supply of water to any water course or to any person who is entitled to supply shall not be stopped except

in cases falling under clauses (a) to (f). None of these clauses has any application to the present case. Consequently the proposal to compel the irrigators to surrender 1/3rd of their cane permit and to delay their plantation till the commencement of the next monsoon with a view to make water so saved available for growing food and fodder crops in the hot weather would not be legally feasible under the Bombay Irrigation Act and the Rules thereunder.

5. In regulating the distribution of irrigation water it is possible to make an order under clause (a) of rule 81(2) of the Defence of India requiring the irrigation authorotiea to cut down the supply of water to the extent of one-third in the case of sugarcane plantation; but no order can be made thereunder requiring water thus saved to be made available for raising food and fodder ~~xxxx~~ crops. For the reasons stated by the R.L.A. in his last opinion No. 9887, dated 10.12.1942 it would be safer to approach the Govt. of India to frame a new rule or to amend the existing Defence of India Rules for the purpose.

Sd/- R.T.K.
15/12

A.L.R.

Attention is invited to R.L.A's opinion No.9887 dated 10.12.1942 in which the question raised by A(F) in para 5 of his note is dealt with. There the view was taken that the Def. of India Rules do not, as they stand, empower Govt. to control agriculture. Nor does ~~it~~ it seem that the Bomby Irrigation Act. 1879 gives to Govt. the kind of control that is now wanted. A new rule under the Def. of India Act seems the best solution.

U.R. to P.W.D. No.10135 dt.21-12-42.

Sd/- R.S.V.
16/12

R.L.A. Sd/- P.N.Koos.
17/12

S.I./8/5/56. 4c.

Submitted.

The Registrar of Companies, Bombay, holds that under sec.134 (1) of the Indian Companies Act. 1913, the copies of the accounts are to be filed with the Registrar after they are laid before the general meeting of the Company; but as in view of the provisions of sub-rule (1) of rule 45B of the Defence of Indian Rules the Accounts cannot be laid before the general meeting of the Company, the condition precedent cannot be complied with and so it would not be necessary to file the accounts under clause (b) (i) of the first proviso to sub-rule (1) of rule 45B of the Defence of India Rules. The question for the consideration of the R.L.A. is whether the view expressed by the Registrar of Companies is correct.

2. The question that reduces itself for consideration is whether under the first proviso to sub-rule (1) of rule 45B of the Indian Companies Act, 1913 read with sect.134 of Indian Companies Act,1913 the public utility undertakings are bound to file copies of their accounts with the Registrar of Companies as before.

3. Under sec. 131 (1) of the Indian Companies Act,1913, the directors of every company shall at some date not later than eithteen months after the incorporation of the company and subsequently once at least inevery calendar year lay before the company in general meeting a balance sheet and profit and loss account etc. Under sub-sec.(2) of the said section the balance-sheet and the profit and loss account or income and expenditure account shall be audited by the auditor of the company and,

3. It is true that section 134(1) contemplates filing of copies of accounts etc. with the registrar after they are placed before the company at its general meeting, but in view of rule 45B(1) of the D. of I. Rules that condition cannot be satisfied, for otherwise it would amount to publication of the accounts. Clause (a) of the first proviso to rule 45B(1), however, provides that nothing in the rule shall, unless the Central Govt. by general or special order otherwise directs, relieve any such person from any obligation to furnish to Govt. or to any Govt. authority copies of any such accounts, report or document, or any other information. Rule 45B(1) of the D./I. rules does not appear to override the provisions of section 134(1) of the Indian Companies Act. Both the provisions have to be construed together so as to produce harmonizing result. Considering both section 134(1) of the Indian Companies Act, 1913 and rule 45B(1) together, the result appears to be this that accounts cannot be laid before the general meeting in view of rule 45B(1) of the D. of I. Rules; but under clause (a) of the first proviso to rule 45B(1) restriction placed on the public utility undertakings as regards publication of accounts, reports etc. does not relieve such undertakings from their obligation to furnish to the Registrar copies of such accounts, reports etc. the Registrar cannot, therefore, refuse to file them. The view taken in the F.D. office note dated 25-11-42 appears to be correct.

Id/- E.P.Bhamgara
8/12

S.A.S.

The question for the consideration of the R.L.A. is whether the provision in sec.134(1) of the Indian Companies Act,1913 regarding the filing of copies of the balance sheet and profit and loss account with the registrar is overridden by rule 45B of the Defence of India Rules.

2. It is true that under sec.134(1) of the Indian Companies Act,1913 the laying of balance sheet and profit and loss account before the company at a general meeting is a condition precedent to the filing of copies thereof with the Registrar and that condition cannot be now complied with in view of sub-rule(1) of rule 45B of the Defence of India Rules; but the first proviso to sub-rule(1) of rule 45B impliedly dispenses with compliance of such condition. Consequently rule 45B does not preclude filing of copies of the balance sheet and profit and loss account with the Registrar under sec.134(1) of the Indian Companies Act.

A. The view taken by F.D. at p.21 ante is correct. A.

Id/- R.T.K.
11/12

A.L.R.

I agree.

Reply may be A.A. of S.A.S's note.

Id/- R.S.H.
11/12

R.L.A.

Id/- P.N.Moos.
16/12

U.R. to F.D. No.10092 dated 17-12-1942.

S.I./8/5/56. 4c.

Submitted.

Attention is invited to letter from the Govt. of India, Dept. of Commerce, No.24(ii). Tr.(C.L.)/42 dated 11.12.42 in which the views of the Government of India regarding the interpretation of rule 45B of the Defence of Indian Rules are communicated to the Provincial authorities. In this connection attention is invited to R.L.A's opinions Nos.8235 dated 10.10.42 and 10092 dated 17.12.42.

2. A copy of the Government of India letter may be kept along with the opinion, and and the paper may be returned to the F.D. with the remark "Seen and returned".

Id/- E.P.B.
2/1

S.A.S.

Id/- R.T.K.
4/1

A.L.R.

Does the Govt. of India interpretare agree with R.L.A's?

Id/- R.S.H.
4/1.

Mr.B.

Resubmitted.

The view expressed by the Govt. of India in para 2(a) & (b) in similar to that taken in para 3 of the office note dated 6.10.42 underlying R.L.A's opinion No.8235 dated 10.10.42. The view expressed in para 2(c) of the Govt. of India letter follows as a necessary corollary to the view taken in sub-paras (a) & (b) of para 2.

Id/- E.P.B.
4/1

S.A.S.

Id/- R.T.K.
4/1

A.L.R.

"A" above may be done.

R.L.A. may see for his information.

Id/- R.S.H.
5/1

R.L.A.

Id/- P.N.Moos
6/1

R.L.A.
Office of the/[redacted]

Seen and returned.

Sd/- P.N.Moos
8/1

Remembrancer of Legal Affairs.

U.R. to F.D., No.202, dated the 9th January 1943.

Submitted.

File with R.L.A's opinion

No.8235 dated 10.10.42 in o.d. of I/1942.

Id/- E.P.B.

S.A.S.

Id/- R.T.K.

S,I./8/6/56. 4c.

The order at page 6 or 7 (The Freezing Order) is culnerable in more respects than one. Part of it is in the nature of authorisation for the removal of sugar consignments from the Railway yard etc; this part has no relation to rule 75A (5) under which the order is issued but has relation to the Government Notifications of August and September 1942 which ban the removal except under a license from certain officers. The first part of the order must therefore be deemed a license for the purposes of the relevant notification in view of the specific heading in the order, namely, "License for removal of sugar from Railway Goods Yard etc. (Government Notification, Finance Department (supply) No.30, dated 26.9.1942)" "but it would have been advisable to issue the license separately from the second part of the order which is relatable to rule 75A(5) The second part regulates the removal and disposal of the sugar by preventing these operations 'without "my" previous permission', the order being thereunder signed by "the Assistant Secretary, General Department" (on page 7), and "for Director of Civil Supplies" (on page 6). The power under rule 75A(5) is delegated to the Director and Assistant Director of Civil Supplies By G.N.G.D., No.9/1, dated 6.8.1942; but not the Assistant Secretary, General Department. Hence the order at page 7 is ultra vires rule 75A(5) which enables orders under the rule to be issued by Government only and which provides for the requirement of the "permission of Government" only (or of an authority to whom Government's powers are delegated in this respect). The signature in the order on page 6 should also have been of the Director and not "for" him. Furthermore from the legal point of view 'removal' is clearly regulatable under rule 81(2) (a) but only doubtfully so under rule 75A (5).

2. Next as regards the Release Order, it appears to be issued in pursuance of the above freezing Order, and authorises the sale of specified quantity of sugar to specified customers. The "Release Order" is signed "for Secretary, General Dept."

and hence cannot have the force of giving '"my" permission' pursuant to the freezing order issued by a different authority. Even if it could have such force, it could only enable the authorised person to put through the permitted dealings if he wished to but not otherwise. To compel him to do so, it would be necessary to issue a separate order in that behalf under rule 81(2) (a). The order already issued under that rule in Govt. Notification, General Department, No.30/2, dated 10.6.1942 will not have the full compulsory effect in view of the High Court ruling in Imperator v. Mahadev Mahalu (Revision Application No. 244/1942) that " a man has not withheld sugar from sale to any person if he has sold some sugar to any person demanding it and has not evinced any unwillingness to sell the rest of the sugar to other persons".

3. In order to avoid all confusion, it seems best to resort to rule 81(2) for all purposes. The advantage of that rule over rule 75A(5) is that by a resort to the former -

1). requisitioning need not follow,

2). removal is clearly regulatable etc.,

3). any authority can be authorised to permit releases, and

4). multiplicity and interdependence of rules can be avoided.

(see R.L.A's No.523-Confl. dated 3-12-1942, and 527-Confl. dated 4.12.1942).

Sd/- P.N.Koos
14/12

Remembrancer of Legal Affairs.

U.R. to F.D. (supply), No.9968, dated the 14th December 1942.

S.I./8/5/56. 4c.

Office of the R.L.A.

Sub-rule (1) of rule 75A of the Defence of India Rules empowers Government to requisition any property and sub-rule (2) allows Government to use or deal with the requisitioned property in such manner as may appear to it to be expedient. Section 3 of the Defence of India Act Inter alia provides that any order passed under any rule ~~xx~~ made there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. Reading these provisions together it will be clear that the land which has been leased by Govt. to the Municipality in trust for use as a recreation ground in the present casecan upon requisitioning the leasehold interest of the Municipality therein under sub-rule (1) of rule 75A of the Defence of India Rules be used by Government or the Municipality without the sanction of the High Court as a mass burial ground for the dead bodies of air raid or naval bombardment victims.

Sd/- P.N.Moos
24/12

Remembrancer of Legal Affairs.

U.R. to H.D., (Poll) A.R.P., No.10290, dated the 24th Dec. 1942.

S.I./8/5/56. 4c.

R.I.No.12630 dated 17-12-42.

Submitted.

By G. of Deptt. of Commerce-War Notfn. No.91 C.W.(1)/42, dated the 7th February 1942, The Central Govt. in exercise of the powers conferred under rule 84(3) of the D. of I. Rules issued orders prohibiting the export of any good of the prescribed description to any place outside India except in the case mentioned in the notfn. Under clause (a) of that notfn. any goods consigned to or destined for the portuguese possessions in India and intended for use or consumption therein are not prohibited from export. The D.M. Surat, has issued a notfn. No. Prices, dated 22.7.42 under rule 81(3)(a) of the said rules prohibiting the removal of Jowar, wheat, rice, tur dal by road or rail from Surat district to any place in India outside the limits of the said district except under a license granted by the D.M. A merchant from Bulsar has applied for a permit to export rice and tur dal by sea to Portuguese territory. The D.M., Surat holds that clause (a) of the G. of I. notfn. stated above would not apply to this case as the goods proposed to be sent by the merchant are not good destined for consumption there. The D.M. however holds that the matter is not free from doubt and solicits Govt. orders in the matter whether the merchant's request should be granted or refused.

3. Grains and Pulse fall under serial No.9 in Part D of the Sch. to the Govt. of India Dept. of Commerce Notfn. No.91 C.W.(1)/42

dated 7.2.42 whether the goods are exported by the merchant to Protuguese territory for use or consumption therein is a question of fact and should be decided on merits. Even presuming that the goods are meant for consumption or use in the Portuguese territory, and do not fall under the prohibition as directed in the G. of India Notfn, still the question is whether its export outside Surat district would require a licence from the D,M. Surat. As held in R.L.A's opinion No.8661, dated the 26-10-42, the orders issued by the Govt. of Bombay (or by any person authorised by that Govt.) under clause (a) of rule 81(2) are in no way affected by the orders passed by the Central Govt. under clause.(i) of rule 84(3) of the D. of I. Rules. The orders of the D,M.however probibits removal of particular articles out of the Surat Dist. to any place in India outside the limits of the said district. The goods in this case are to be sent to the Portuguese territory which is outside India and the removal for such purpose will not require D.M's license. The goods will be in transit in India outside the Surat Dist. The words 'in India' in the D.M's notfn. have complicated matters. Besides if the goods are to be sent by sea, then no license would be necessary as the D.M. has prohibited only export by rail or road.

Id/- S.R.Potnis
18/12

S.I./8/5/56. 4c.

Office of the R.L.A.

The order issued on 22nd July 1942 by the District Magistrate, Surat, under clause (a) of rule 81(2) in the present case prohibits export of rice, turdal etc. by road or rail from any place within the limits of the Surat district to any place in India outside the limits of the said district except under a license granted by the District Magistrate, Surat. From the definition of 'India' in section 3(27) of the General Clauses Act, 1897, read with rule 3 of the Defence of India Rules it is clear that India must be read as excluding Portuguese territory. It appears therefore that the aforesaid order of the District Magistrate, Surat, does not prohibit the unlicensed export of rice, turdal etc. by sea from any place within the limits of the Surat District to Portuguese territory.

Sd/- P.N.Moos
31/12

Remembrancer of Legal Affairs.

W.R. to F.D. (supply) No.9, dated the 31st December 1942.
2/1/43.

Submitted for approval and signature.
Id/-

S.I./8/5/56. 4c.

Office of the R.L.A.

A proper notice terminating the lease has been given to Mr. Falcon; and since he has fialed to vacate the premises after the expiry of the notice, he has become liable to be evicted through Court. The Bombay Rent Restriction Order, 1942, has been extended to Poona, but it is doubtful if that Order has any application to Crown property. Even if the Order is applicable it will not solve the present difficulty for the recalcitrant tenant cannot be summarily evicted on the Rent Controller's certificate under the proviso to clause 8 of the Order without recourse to a Court of Law. It is true that under certain contingencies action can be taken under clauses (bb)·(iii) and (f) of rule 81(2) of the Defence of India Rules for requiring accommodation to be let to a specified parson, but it appears that it would be straining the language of that provision if Mr. Falcon is ordered to be evicted for the purpose of accommodating a Regional Transport Officer. On the whole it appears safer to take a certificate from the Rent Controller under the proviso to clause 8 of the Bombay Rent Restriction Order and file a suit for eviction of Mr. Falcon so that even if the Court holds that the Bombay Rent Restriction Order does apply to Crown property, there would be no difficulty in evicting Mr.Falcon.

Sd/- P.N.Moos
24/12

Remembrancer of Legal Affairs.

U.R. to P.W.D., No.10305, dated the 24th December 1942.

S.I./8/5/56. 4c.